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**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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October 2, 2026

VIA ELECTRONIC FILING

The Honorable Debbie-Anne A. Reese
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: *Otter Tail Power Company*
Operation and Maintenance Agreement for the Big Stone South to
Alexandria Transmission Project
Docket No. ER27-[]-000**

Dear Secretary Reese:

In accordance with Section 205 of the Federal Power Act¹, Part 35 of the Federal Energy Regulatory Commission's (FERC" or "Commission") regulations,² and Rule 205 of the Commission's Rules of Practice and Procedure,³ Otter Tail Power Company ("OTP"), a Minnesota corporation, submits for filing an executed Operation and Maintenance Agreement dated as of September 3, 2026, (the "OMA") between OTP and Western Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota ("WMMPA" and, together with OTP, the "Parties"). The OMA governs the operation and maintenance of an approximately 96 mile long 345 kV transmission line between OTP's Big Stone South Substation and WMMPA's Alexandria Substation (the "BSSA Transmission Line").⁴ The BSSA

¹ 16 U.S.C. § 824d.

² 18 C.F.R. pt. 35.

³ 18 C.F.R. § 385.205.

⁴ The BSSA Transmission Line is the western segment of the Big Stone South to Alexandria to Cassie's Crossing project, approved in July 2022 as part of the Tranche 1 portfolio of the 2021 MISO Transmission Expansion Plan. See MISO, MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report 4 (2022) (listing the Big Stone South to Alexandria to Cassie's Crossing project as part of the Tranche 1 portfolio). The project is now known as the Big Stone South to Alexandria to Big Oaks 345 kV transmission project, and the BSSA Transmission Line is its western segment; see Minn. Pub. Utils. Comm'n Docket Nos. E-002, E-017, ET-2, E-015, ET-10/CN-22-538 (certificate of need for the Big Stone South to Alexandria to Big Oaks 345 kV Transmission Project); see also

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Transmission Line is a “Project Component” under the OMA.⁵ The OMA is submitted and designated in accordance with Order No. 714⁶ and the Commission’s eTariff filing requirements. OTP is a public utility under Section 201(e) of the Federal Power Act.⁷ WMMPA is not a public utility under the Federal Power Act.⁸ OTP is concurrently submitting for filing the Construction Management Agreement for the BSSA Transmission Line in a separate Commission docket. OTP has been authorized by WMMPA to state that WMMPA concurs with this filing.

Each of OTP and WMMPA is a party to the OMA as an Owner⁹ of the BSSA Transmission Line. The OMA designates OTP as the “Maintenance Provider” and the “Control Center Authority” (each such role being that of a “Responsible Entity”),¹⁰ responsible for performing maintenance, repair, restoration, and other services as well as providing day-to-day operational control of the BSSA Transmission Line.

OTP submits the OMA as a contract that relates to its jurisdictional rates and service, and as an initial rate schedule under Section 35.12 of the Commission’s regulations.¹¹ The OMA sets the terms on which OTP will perform operation and maintenance services for the BSSA Transmission Line and be reimbursed for the costs of doing so, with no profit. The OMA is modeled on similar agreements for jointly owned transmission lines that the Commission has

OMA Appendix A (describing the Project Component as “approximately 96 miles of 345 kV transmission line” from OTP’s Big Stone South Substation to WMMPA’s Alexandria Substation).

⁵ CMA Appendix A (describing the Big Stone South to Alexandria 345 kV Transmission Line as a Project Component).

⁶ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. Preambles ¶ 31,276 (2008).

⁷ 16 U.S.C. § 824(e) (defining “public utility” to mean “any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter”).

⁸ See 16 U.S.C. § 824(f) (“No provision in this subchapter shall apply to, or be deemed to include . . . a State or any political subdivision of a State . . . unless such provision makes specific reference thereto.”).

⁹ Terms used in this transmittal letter with initial capitalization that are not otherwise defined herein have the meanings specified in the OMA.

¹⁰ OMA preamble (naming as parties OTP and WMMPA “as Owners; and OTP as the Maintenance Provider and Control Center Authority”); OMA Recitals ¶¶ D, E; see also OMA § 1.1 (defining each of the “Maintenance Provider” and the “Control Center Authority” to mean OTP, and excluding “any reference to OTP in any other capacity”).

¹¹ 16 U.S.C. § 824d(c) (requiring every public utility to file “all contracts which in any manner affect or relate to such rates, charges, classifications, and services”); see also 18 C.F.R. § 35.1(b) (providing that a rate schedule applicable to a transmission of electric energy that does not supersede, cancel or change an existing filed rate schedule “shall be filed as an initial rate in accordance with § 35.12”).

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previously accepted for filing.¹² Under the OMA, the Responsible Entities are compensated on a loaded cost basis, with no profit.¹³ The OMA allocates costs between OTP and WMMPA as the Owners of the BSSA Transmission Line and imposes no charge on any third party. Each Owner pays its Ownership Percentage¹⁴ of invoiced costs, and the Owners' payment obligations are several.¹⁵ Expenditures are controlled through five-year budgets approved by the Management Committee.¹⁶ Consistent with past precedent,¹⁷ the Commission should accept the OMA for filing.

This transmittal letter describes the BSSA Transmission Line that is a Project Component and therefore a part of the overall Project, as well as the OMA. Service under the OMA with respect to the BSSA Transmission Line is expected to commence a reasonable time before the Project Component In-Service Date, which the Parties currently anticipate will occur in 2030.¹⁸

¹² See, e.g., *Otter Tail Power Co.*, Docket No. ER11-2713-000 (Mar. 18, 2011) (delegated letter order) (accepting the operation and maintenance agreement for the jointly owned Bemidji to Grand Rapids project); *N. States Power Co.*, Docket No. ER14-2725-000 (Oct. 24, 2014) (delegated letter order) (accepting the operation and maintenance agreement for the Big Stone South to Brookings County project); *N. States Power Co.*, Docket No. ER13-1066-000 (May 8, 2013) (delegated letter order) (accepting the operation and maintenance agreement for the Brookings project), *on reh'g*, 146 FERC ¶ 61,007 (2014); *N. States Power Co.*, Docket No. ER22-375-000 (Dec. 16, 2021) (delegated letter order) (accepting the operation and maintenance agreement for the Huntley-Wilmarth project).

¹³ OMA § 6.1 (providing that each Responsible Entity "is entitled to be reimbursed for Operating Expenses expended by it in the performance of the Services"); OMA § 1.1 (defining "Operating Expenses" as "all expenses of operating and maintaining a Project Component" and including within them "general, administrative, and management expenses"); OMA § 6.6 (providing that the Responsible Entity "shall bill each Owner its actual Line Operating Expenses on a monthly basis, or as otherwise determined by the E&O Committee"); OMA § 6.5 (providing that the Responsible Entity bills each Owner the COSA Fee annually, calculated in accordance with Appendix F, to account for the COSA Operating Expenses attributable to the prior calendar year, and that "[t]he Parties acknowledge that the COSA Fee represents a reasonable estimate of COSA Operating Expenses incurred by the Responsible Entity over the life of the Project"); OMA App. C (Reimbursement of Cost for Services); OMA App. F (Illustrative Examples of Operating Expense Allocation). No COSA exists as of this filing; Appendix A of the OMA identifies the BSSA Transmission Line as the initial Project Component and does not identify any Co-Owned Substation Asset. This annual approach to recovering substation-related operating expense is consistent with MISO's Schedule 50 (Annual Interconnection Customer O&M and Overheads Charge Associated With Transmission Owner's Interconnection Facilities), which provides for an annual charge, including overheads, for the operation, maintenance and repair of a transmission owner's interconnection facilities.

¹⁴ [BEGIN CUI/PRIV]
CUI/PRIV]; see OMA § 1.1.

[END

¹⁵ OMA §§ 6.4, 8.8.

¹⁶ OMA §§ 7.1, 7.3.

¹⁷ See *supra* note 12.

¹⁸ OMA § 2.5.1 (providing that Services "will not be needed until a reasonable time prior to the Project Component In-Service Date" and that the estimated Project Component In-Service Date for each Project Component "shall be as designated by the Construction Manager pursuant to the terms of the Construction Management Agreement applicable to the Project Component").

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The OMA has been duly executed by OTP and WMMPA, and no further agreement of the Parties is required for the filing of the OMA.

OTP respectfully requests that the Commission grant waiver of the 60-day prior notice requirement to allow the OMA to become effective on September 3, 2026, as discussed below.

I. BACKGROUND AND INSTANT FILING

A. Overview

On July 25, 2022, the board of directors of the Midcontinent Independent System Operator, Inc. (“MISO”) approved the Tranche 1 portfolio of MISO’s Long Range Transmission Plan as an addendum to the 2021 MISO Transmission Expansion Plan (“MTEP21”).¹⁹ The Tranche 1 portfolio includes the Big Stone South to Alexandria to Cassie’s Crossing 345 kV project.²⁰ The BSSA Transmission Line is the western segment of that project.²¹ The Tranche 1 projects meet the criteria for Multi-Value Projects under MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff, and their costs are recovered on a pro-rata basis from load in the MISO Midwest Subregion.²² The BSSA Transmission Line will be operated as part of the MISO transmission system and under the functional control of MISO.

The BSSA Transmission Line is an approximately 96-mile, 345 kV transmission line, of which approximately three and one half miles will be located in South Dakota and the remainder in Minnesota. The Project Components, including the BSSA Transmission Line, will be owned by the Owners jointly as tenants in common.²³ The Owners will have individual undivided interests

¹⁹ MISO, *Long Range Transmission Planning*, available at: <https://www.misoenergy.org/planning/long-range-transmission-planning/> (“Approved in July 2022 as part of MTEP21, the \$10.3 billion Tranche 1 portfolio consists of 18 projects”); see also MISO, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report 3* (2022) (proposing “a Tranche 1 Portfolio of 18 transmission projects”).

²⁰ Cassie’s Crossing Substation was subsequently renamed the Big Oaks Substation after MISO’s approval. For consistency with MISO’s approval of MTEP 21 this letter continues to refer to such substation as Cassie’s Crossing in this filing.

²¹ MISO, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report 4* (2022) (listing the Big Stone South to Alexandria to Cassie’s Crossing project as part of the Tranche 1 portfolio).

²² *Midcontinent Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,124, at PP 71-72 (2022) (accepting Tariff revisions permitting the costs of Multi-Value Project portfolios with subregional benefits to be allocated on a postage stamp basis within the applicable MISO subregion); see also MISO, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report 14* (2022) (“With FERC’s approval the costs of the LRTP Tranche 1 Portfolio will be recovered on a pro-rata basis from load in the MISO Midwest Subregion.”); MISO, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Executive Summary 1* (2022) (stating that the portfolio “meets the criteria for Multi-Value Projects defined in the Tariff”).

²³ OMA § 1.1 (defining “Project Phases” as the transmission line segments of the Project that “the Parties own jointly as tenants in common”); see also OMA § 1.1.

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without right of partition in each Project Component. [BEGIN
CUI/PRIV]
[END CUI/PRIV].

The BSSA Transmission Line will interconnect with the Big Stone South Substation near Big Stone City, South Dakota, and the Alexandria Substation, near Alexandria, Minnesota (collectively referred to as the “Substations” and each individually as a “Substation”). The Big Stone South Substation is discretely owned by OTP, and the Alexandria Substation is discretely owned by WMMPA.²⁴ The Big Stone South Substation and the Alexandria Substation are Discretely Owned Substation Assets, which do not constitute part of the Project. Improvements to a Substation are constructed, owned and operated by the existing Owner of that Substation, and the OMA excludes the expenses of those improvements from Operating Expenses.²⁵

OTP is concurrently submitting for filing in a separate docket the Construction Management Agreement between the Parties that governs construction of the BSSA Transmission Line, so that the Commission may consider both agreements before construction begins. Consistent with past practice of jointly-owned projects of this nature in which OTP has participated,²⁶ the Parties will enter into a Transmission Capacity Exchange Agreement (“TCEA”) and file it with the Commission. Together, the CMA, OMA and TCEA will govern the construction, operation, maintenance, and capacity rights for the BSSA Transmission Line.

The Minnesota Public Utilities Commission granted a certificate of need for the Big Stone South to Alexandria to Big Oaks project in October 2024 and issued a route permit for the BSSA Transmission Line on June 25, 2026.²⁷ The South Dakota Public Utilities Commission approved

²⁴ See OMA § 1.1; see also OMA Appendix A (describing the BSSA Transmission Line as running from OTP’s Big Stone South Substation to WMMPA’s Alexandria Substation).

²⁵ OMA § 1.1 (excluding from “Operating Expenses” the “expenses incurred by a Party in connection with improvements to Discretely Owned Substation Assets”).

²⁶ OTP and Montana-Dakota Utilities Co. jointly own the Big Stone South to Ellendale 345 kV project. The project agreements for that project were submitted as Section 205 rate filings, beginning with the construction management agreement and following with the operation and maintenance agreement and the transmission exchange agreement; see Combined Notice of Filings #1, 80 Fed. Reg. 45,216, 45,217 (July 29, 2015) (noticing Docket No. ER15-2252-000 (construction management agreement, filed July 23, 2015)); Combined Notice of Filings #1, 80 Fed. Reg. 51,546 (Aug. 25, 2015) (noticing Docket No. ER15-2463-000 (operation and maintenance agreement), Docket No. ER15-2464-000 (transmission exchange agreement) and Docket No. ER15-2465-000 (extension facilities agreement)); see also OMA § 1.1 (defining the “Transmission Capacity Exchange Agreement” as an agreement “to be entered into after the Effective Date” under which “each Owner grants to the other Owner all rights and benefits of ownership of a Project Component” in proportion to its ownership percentage).

²⁷ *In the Matter of the Application for a Certificate of Need for the Big Stone South—Alexandria—Big Oaks Transmission Project*, Docket Nos. E-002, E-017, ET-2, E-015, ET-10/CN-22-538, ET-10/TL-23-159, Order Granting Certificate of Need and Issuing Route Permit (Minn. Pub. Utils. Comm’n Oct. 30, 2024); *In the Matter of the Application for a Route Permit for the Big Stone South to Alexandria 345-kV Transmission Project in West-Central Minnesota*, Docket No. E-017, ET-10/TL-23-160, Order (Minn. Pub. Utils. Comm’n June 25, 2026).

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a facility permit for the South Dakota portion of the BSSA Transmission Line on January 30, 2025.²⁸

Construction of the BSSA Transmission Line is anticipated to begin in 2028, and the line is expected to be placed in service in 2030.²⁹

B. The OMA

The OMA governs day-to-day operation and maintenance of the BSSA Transmission Line and any Additional Project Component after the Effective Date, and allocates the associated operation and maintenance costs between the Owners. Oversight of the Responsible Entity under the OMA is exercised through the Management Committee and the Engineering and Operating Committee (the ‘E&O Committee’).³⁰ The BSSA Transmission Line is the initial Project Component under the OMA, but the OMA is drafted to apply to additional facilities that the Parties may own jointly own and develop in the future defined as Additional Project Components under the OMA. Project Components (which may include any future Project Phases, contemplated to be transmission line segments, together with any COSAs, Capital Improvements, Upgrades, Project Real Property, New Interconnections, and other jointly owned property) are jointly owned by the Parties as tenants in common. The Project Components together constitute the ‘Project.’³¹ The key provisions of the OMA are as follows.

**1. Engagement of Maintenance Provider and Control Center Authority
(Article 2)**

Article 2 appoints OTP as the Maintenance Provider to provide Maintenance Services and as the Control Center Authority to provide Control Center Services with respect to the BSSA Transmission Line. OTP accepts each such appointment and will perform the Services as an independent contractor. The Maintenance Provider and the Control Center Authority are each referred to in the OMA as a ‘Responsible Entity’ and collectively as the ‘Responsible Entities.’

²⁸ *In the Matter of the Application by Otter Tail Power Company and Western Minnesota Municipal Power Agency for a Facility Permit for a 345-kV Transmission Facility and Associated Facilities in Grant County, South Dakota*, Docket No. EL24-015, Order Granting Motion for Approval of Settlement Stipulation; Order Granting Permit to Construct Facility; Notice of Entry, (S.D. Pub. Utils. Comm’n Jan. 30, 2025).

²⁹ MISO, *MTEP21 Report Addendum: Long Range Transmission Planning Tranche 1 Portfolio Report 4* (2022) (listing an expected in-service date of June 1, 2030 for the Big Stone South to Alexandria to Cassie’s Crossing project); see also Otter Tail Power Co., *Otter Tail Power Company and WMMPA Receive MN Route Permit Approval for New Transmission Line* (June 2026) (anticipating that construction will begin in 2028, with the line targeted to enter service by the end of 2030).

³⁰ OMA § 1.1.

³¹ OMA § 1.1 (defining ‘Project’ to mean ‘all Project Components,’ ‘Project Component’ to include all Project Phases, and ‘Project Phases’ as the transmission line segments of the Project that ‘the Parties own jointly as tenants in common’ and as further described in Appendix A).

For the BSSA Transmission Line, OTP is the Responsible Entity in both capacities.³² The Maintenance Provider performs the Maintenance Services and is separately designated as the Owners' disclosed agent for three enumerated purposes: (1) purchasing Equipment, Materials, Consumables and Services from Third Parties; (2) undertaking day-to-day ministerial operational activities and decisions relating to the Easements in the ordinary course; and (3) amending Real Property Agreements to correct non-substantive errors or conform legal descriptions to the actual location of the transmission facilities.³³ The Agency Authority binds the Owners severally but not jointly, except with the prior written consent of the Management Committee, and does not authorize the Maintenance Provider to mortgage, grant Liens against, transfer, or dispose of interests in Project Real Property, or appear on behalf of the Owners in litigation relating to the Project Real Property.³⁴ The E&O Committee, in coordination with the Responsible Entities, is to develop a rolling five-year Maintenance Plan and an Inventory Plan for the BSSA Transmission Line.³⁵

2. Maintenance Services (Article 3)

Article 3 lays out the Scheduled/Unscheduled Maintenance Services and First Responder Services that the Maintenance Provider is to provide on behalf of the Owners. Scheduled/Unscheduled Maintenance Services include vegetation management, outage scheduling, security, maintenance, repair and restoration services. First Responder Services include observation, inspection, assessment, switching and other services in the event of an Emergency. The Maintenance Provider is to perform these services in a manner substantially similar to the services it performs for its own transmission lines.³⁶ The Maintenance Provider is to prepare a recommended annual update to the Maintenance Plan by May 1 of each year.³⁷ The Maintenance Provider must promptly notify the E&O Committee of material changes required to the Maintenance Plan.³⁸ The Maintenance Provider must procure Inventory required for the performance of Maintenance Services in accordance with the Inventory Plan and undertake Capital Improvements as specified in the Final Project Component Budget.³⁹ Maintenance Costs include

³² OMA § 2.5.1 (providing that Services "are only to be required from, and provided by, the Maintenance Provider and the Control Center Authority," each a "Responsible Entity"); *see also* OMA § 1.1 (defining each of the "Maintenance Provider" and the "Control Center Authority" to mean OTP).

³³ OMA § 2.3.

³⁴ OMA § 2.4.

³⁵ OMA § 2.5.2.

³⁶ OMA § 3.1.

³⁷ OMA § 3.1.1.1.

³⁸ OMA § 3.1.1.2.

³⁹ OMA §§ 3.1.3, 3.1.4.

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those amounts incurred in connection with performance of Maintenance Services as determined in accordance with Appendix C and Appendix F, as applicable, including amounts due to Third Party contractors, costs related to acquisition of Equipment and Materials, premiums and deductibles for required Project Insurance, sales, use and similar taxes, and other specified costs.⁴⁰ The OMA excludes specified costs from Maintenance Costs, including costs that arise from the Maintenance Provider's failure to perform its obligations under the OMA where that failure results from its willful or intentional misconduct, and requires insurance proceeds recovered in respect of Maintenance Costs to be offset against those costs.⁴¹ The Maintenance Provider is to perform Maintenance Services in accordance with Applicable Law, Good Utility Practice, the OMA terms, Interconnection Agreements, applicable insurance policies, and Real Property Agreements.⁴² The Maintenance Provider may use Subcontractors and contractors under Master Contracts to perform portions of the Maintenance Services and remains liable to the Owners for Maintenance Services performed by others to the same extent as if it had performed them. The Maintenance Provider must consult in good faith with the E&O Committee before entering subcontracts or Master Contracts with an annual contract value at or above the threshold specified in Section 3.5, and is to engage in a competitive selection process for procurements with a total annual contract value in excess of the threshold specified in Section 3.6.1.1, subject to specified exceptions.⁴³

3. Control Center Services (Article 4)

Article 4 addresses the provision of Control Center Services. OTP, as Control Center Authority, is to have day-to-day operational control of the BSSA Transmission Line after its in-service date for purposes of Control Center Services, which are to be provided in accordance with Good Utility Practices, Applicable Law, the OMA, and applicable insurance policies.⁴⁴ Control Center Services include accepting and maintaining physical operation of transmission lines, monitoring alarms, accommodating Modifications, dispatching the Maintenance Provider to perform First Responder Services, cooperating with Transmission Providers and others to schedule outages, training Maintenance Provider personnel, and performing other services requested by the E&O Committee and agreed to by the Control Center Authority. If the Control Center Authority is entitled to reimbursement pursuant to Applicable Energy Regulations or otherwise, it will not be entitled to further reimbursement under the OMA, but if not entitled to such reimbursement, the Control Center Authority will be reimbursed for Control Center Costs determined in a manner

⁴⁰ OMA § 3.2.1.

⁴¹ OMA §§ 3.2.2, 3.2.3.

⁴² OMA § 3.3.

⁴³ OMA §§ 3.5, 3.6.1.1.

⁴⁴ OMA §§ 4.1.4.3.

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agreed to by the Parties that fairly allocates the actual costs the Control Center Authority incurs to perform those services to the Owners.⁴⁵

4. Responsible Entity Obligations (Article 5)

Article 5 defines the obligations of the Responsible Entities. The Responsible Entities agree to comply with Applicable Law. On behalf of the Owners, the Responsible Entity for each Project Component agrees to comply with the NERC Compliance Requirements.⁴⁶ For the BSSA Transmission Line, that Responsible Entity is OTP, in its capacities as the Maintenance Provider and the Control Center Authority. Each Responsible Entity is to maintain Governmental Approvals and comply with insurance obligations in Appendix D.⁴⁷ Under Section 5.8, the Maintenance Provider is to retain Maintenance Records and the Control Center Authority is to retain Control Center Records in accordance with standard document retention practices, and the Responsible Entity is to make those records available for inspection and audit by either Owner on at least five Business Days' notice. Upon expiration of the Term or the earlier termination of a Responsible Entity, and at the request of the E&O Committee, each Owner and each Responsible Entity agrees to negotiate terms for post-termination transition services to another Responsible Entity on substantially the same payment and liability terms as the OMA.⁴⁸

5. Funding and Payment (Article 6)

Under Article 6 of the OMA, each Responsible Entity is entitled to reimbursement for Maintenance Costs or Control Center Costs expended in performance of such Services, except for costs arising from its gross negligence (in an aggregate amount not to exceed a specified liability limit), willful misconduct or intentional misconduct. Responsible Entities are to submit Invoices on a periodic Billing Cycle.⁴⁹ The Maintenance Provider is to make available supporting documentation including the basis for amounts invoiced, sales and use tax information, and documentation for asset replacements.⁵⁰ Except for amounts properly withheld or offset, each Owner is to make full payment of its Invoices in immediately available funds by the twentieth day following receipt of such Invoice.⁵¹ Payments not made when due bear interest from the due date until paid at a floating rate equivalent to the Responsible Entity's cost of funds for short-term

⁴⁵ OMA § 4.2.

⁴⁶ OMA §§ 5.1, 5.1.1.

⁴⁷ OMA §§ 5.3, 5.4.

⁴⁸ OMA §§ 5.8.1, 5.8.2, 5.8.3, 5.12.

⁴⁹ OMA §§ 6.1, 6.2.1.

⁵⁰ OMA § 6.2.2.

⁵¹ OMA § 6.4.

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borrowing.⁵² Section 6.8 requires an Owner to notify the Responsible Entity of disputed amounts and, with limited exceptions, to pay disputed amounts pending resolution of the dispute. If the Maintenance Provider defaults on undisputed payments owed to Third Parties under Maintenance Subcontracts, the Owners, acting through the E&O Committee, may satisfy those obligations.⁵³ The Maintenance Provider is to deposit certain recovered funds, proceeds from sale of surplus Equipment, Materials and Consumables, and other amounts arising from the OMA for the benefit of Owners as directed by the E&O Committee.⁵⁴

6. Financial Matters and Reports (Article 7)

Article 7 governs financial matters and reports with respect to the operation and maintenance of each Project Component. Each Responsible Entity is to annually deliver to the E&O Committee a five-year budget describing Capital Expenses and Operating Expenses for inclusion in the Proposed Project Component Budget. Once the Management Committee approves the Proposed Component Budget, it becomes the Final Project Component Budget binding on the Responsible Entities, subject to amendment by Management Committee vote.⁵⁵ If the Management Committee does not approve a Final Project Component Budget by December 1 of the upcoming Year, the previously approved budget remains in effect.⁵⁶ No Responsible Entity may incur Capital Expenses or Operating Expenses causing a Budget Overrun unless pursuant to an Approved Budget Variance, in connection with a Material Adverse Event, or necessary for compliance with Applicable Law.⁵⁷ The Maintenance Provider is to furnish Maintenance Reports, and each Responsible Entity is to furnish Financial Summary Reports, to the E&O Committee.⁵⁸ Under Section 7.10 of the OMA, each Responsible Entity is to retain Financial Records and make them available for inspection and audit. Each Responsible Entity is also to provide reasonable

⁵² OMA § 15.3. The Commission has accepted similar provisions in operation and maintenance agreements for jointly owned transmission lines. *See, e.g., N. States Power Co.*, Docket No. ER22-375-000 (Dec. 16, 2021) (delegated letter order) (accepting the operation and maintenance agreement for the Huntley-Wilmarth project, which provides that “[p]ayments not made when due under this Agreement will bear interest from the due date thereof until the date paid”); *N. States Power Co.*, Docket No. ER25-2838-000 (June 12, 2026) (delegated letter order) (accepting the Fourth Amended and Restated Operation and Maintenance Agreement for the Fargo Project, to which OTP and WMMPA are parties and which incorporates the Alexandria to Big Oaks Project and requires interest for delinquent payments).

⁵³ OMA § 6.10.

⁵⁴ OMA § 6.11.

⁵⁵ OMA § 7.1.

⁵⁶ OMA § 7.2.

⁵⁷ OMA § 7.3.

⁵⁸ OMA § 7.9.

assistance and documentation to the Owners in connection with any prudency review relating to matters within the scope of the OMA.⁵⁹

7. Owners' Rights and Duties (Article 8)

Under Section 8.1, oversight and management of matters is to be determined by the Management Committee or, to the extent of delegated authority, the E&O Committee. Neither committee has the power to direct the means, manner or methodology used by the Responsible Entities to carry out Services.⁶⁰ Each Owner has the right to make reasonable requests for information from the Maintenance Provider and the Control Center Authority, to inspect Project Components during the Term at reasonable times, and to inspect and audit Maintenance Records and Control Center Records.⁶¹ In matters requiring their instruction or decision, each Owner is bound by the written communications, directions, requests and decisions of the Management Committee and the E&O Committee.⁶² All Property of the Owners arising from performance of the Services is to accrue to the benefit of Owners as set forth in the Project Agreements.⁶³ Section 8.8 states that the obligation of each Owner to make payments is several and not joint, in proportion to its Ownership Percentage. If expenditures are materially in excess of amounts usually incurred before invoicing, the Maintenance Provider may request the Management Committee to direct Owners to make estimated funds available upon occurrence of a Material Adverse Event or Emergency.⁶⁴

8. Major Construction Events (Article 9)

Under Article 9, the Management Committee determines the approach to undertaking Major Construction Events. If a Major Construction Event is to occur, the Maintenance Provider is to consult and cooperate with the Management Committee in planning and implementing the activities to be undertaken during the Major Construction Event, including the selection of the Person that will undertake the construction.⁶⁵ The Maintenance Provider is not expected to advance funds that in the aggregate exceed a defined dollar threshold in connection with the performance of the Maintenance Services, including the cost of Major Construction Events. If the defined dollar threshold could be exceeded, the Management Committee and the Maintenance

⁵⁹ OMA § 7.8.

⁶⁰ OMA §§ 8.1, 8.1.1.

⁶¹ OMA § 8.1.2(i)-(iii).

⁶² OMA §§ 8.1.3, 8.1.4.

⁶³ OMA § 8.3.

⁶⁴ OMA § 8.9.

⁶⁵ OMA § 9.1.

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Provider are to agree on an acceptable funding mechanism ahead of undertaking the Maintenance Services and activities associated with Major Construction Events.⁶⁶

9. Term and Termination (Article 13)

The OMA becomes effective on the Effective Date and continues for a term extending five years following the Project Component In-Service Date, and thereafter continues for successive two-year renewal terms unless earlier terminated.⁶⁷ The Management Committee may mutually direct a voluntary termination of the OMA as to any or all Project Components, with the countersignature of each Responsible Entity.⁶⁸ WMMPA may terminate the appointment of a Responsible Entity for Cause, subject to notice and cure rights, and a Responsible Entity may terminate its performance obligations for Good Reason, including WMMPA's uncured failure to pay.⁶⁹ Following a termination of OTP as a Responsible Entity, the Parties will wind up the Services during a four-year Termination Period, and the terminated Responsible Entity is entitled to amounts due through the termination date and specified relocation, severance and demobilization costs.⁷⁰

10. Other OMA Provisions

The remaining OMA provisions govern representations and warranties (Article 10), indemnification (Article 11), confidentiality (Article 12), limitations of liability (Article 14) and miscellaneous provisions (Article 15).

11. Exhibits and Schedules

The OMA includes the following schedules and appendices.

- Schedule 1 (Generally Applicable Provisions)
- Appendix A (Description of the Project Component)
- Appendix B (Project Component Design Criteria Guidelines)
- Appendix C (Reimbursement of Cost for Services)
- Appendix D (Insurance)
- Appendix E (NERC Compliance Requirements)

⁶⁶ OMA § 9.2.

⁶⁷ OMA § 13.1.

⁶⁸ OMA § 13.2.1.1.

⁶⁹ OMA §§ 13.2.1.2, 13.2.1.3, 13.2.1.4.

⁷⁰ OMA §§ 13.2.2, 13.2.3.5, 13.2.3.6.

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- Appendix F (Illustrative Examples of Operating Expense Allocation)

II. EFFECTIVE DATE AND REQUESTS FOR WAIVERS

OTP respectfully requests that the Commission accept the OMA for filing effective September 3, 2026, the date of the OMA, and requests waiver of the 60-day prior notice requirement under Section 35.3 of the Commission's regulations.⁷¹ Good cause exists to grant this waiver.⁷² The OMA was negotiated at arm's length and is a bilateral agreement between OTP and WMMPA. This filing is being made within 30 days after the OMA's execution. No Services will be performed under the OMA until a reasonable time before the BSSA Transmission Line is energized, so acceptance of the requested effective date will not advance the commencement of any service.⁷³ The Parties are the only entities whose interests are directly affected by the OMA, and the OMA establishes no rate or charge for jurisdictional service to any third party. Furthermore, the waiver will have no effect on customers under OTP's other rate schedules.⁷⁴

The appendices to the OMA remain subject to updating based on revisions to design criteria or insurance requirements approved by the Management Committee, as well as other potential changes to the Project such as additional Project Components being added to the Project in the future. OTP requests that the Commission accept the OMA based on the current versions of the appendices and permit OTP to submit final versions of any updated appendices via the EQR or if necessary in a future compliance filing.

OTP also requests waiver of the cost-of-service statement requirements under Part 35 of the Commission's regulations, to the extent applicable. The OMA provides for reimbursement of costs actually incurred and does not establish a traditional cost-of-service rate. To the extent this filing requires waiver of Section 35.12(b) of the Commission's regulations, OTP respectfully requests such waiver. To the extent this filing does not contain any information otherwise required for technical compliance with the Commission's regulations, OTP respectfully requests that compliance with such regulations be waived.

⁷¹ 18 C.F.R. § 35.3(a); *see also* 18 C.F.R. § 35.11 (providing that "[u]pon application and for good cause shown, the Commission may, by order, provide that a rate schedule or tariff, tariff or service agreement, or part thereof, shall be effective as of a date prior to the date of filing" or prior to the date it would otherwise become effective).

⁷² *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,974 (stating that "waiver of notice generally will be appropriate when an uncontested filing has no rate impact"), *order on clarification*, 65 FERC ¶ 61,081 (1993).

⁷³ OMA § 2.5.1 ("Services to be provided under this Agreement with respect to each Project Component will not be needed until a reasonable time prior to the Project Component In-Service Date").

⁷⁴ Rates, rate design and cost recovery for the Project Components are not at issue in this docket and will be addressed through the MISO formula rates of the individual Owners or in proceedings before regulatory agencies with jurisdiction over the individual Owners.

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To the extent any waiver of the Commission's rules and regulations is necessary for acceptance of this filing and the OMA, OTP respectfully requests such waiver.

III. REQUEST FOR CONFIDENTIAL AND CEII TREATMENT

OTP is submitting both a public version of the OMA, included as Attachment A, and a non-public version of the OMA, included as Attachment B. Pursuant to 18 C.F.R. § 388.112, OTP requests privileged treatment of the non-public version of the OMA. The non-public version includes commercially sensitive information in various sections and appendices of the OMA, including Sections 3.5, 3.6.1.1, 3.8, 3.11 and 14.2.1 of the OMA and Appendices C and D to the OMA. Additionally, Sections 3.5 and 3.6.1.1 contain thresholds for subcontracting and competitive selection. Section 14.2.1 caps the liability of the Responsible Entities to the Owners for Damages. Appendix C contains the reimbursement methodology for the Services. Appendix D contains the insurance requirements for the Project. The release of this commercially sensitive information may hinder the Owners' ability to enter into critical agreements with contractors and other parties, or enter into similar agreements in the future. The non-public version of this transmittal letter includes commercially sensitive information regarding the Ownership Percentage of the BSSA Transmission Line. This information is held by the Parties confidentially. Many state right-of-first-refusal laws allow incumbent transmission owners to negotiate ownership percentages when a transmission line connects facilities owned by two or more separate transmission owners.⁷⁵ The disclosure of the Ownership Percentages, therefore, could adversely affect the Parties' ability to negotiate incumbent transmission owner rights in the future. In accordance with Section 388.112(b)(1) of the Commission's regulations and the Commission's document labeling guidance, the cover page and each page of the non-public version are labeled in bold, capital lettering to indicate that they contain privileged information, are marked "DO NOT RELEASE" and bear a top center header reading CUI//PRIV.⁷⁶

Further, the Parties have designated the design criteria, drawings and related engineering materials set forth in Appendix B to the OMA, included as Attachment C, as Critical Energy/Electric Infrastructure Information ("CEII") pursuant to 18 C.F.R. § 388.113. That information provides specific engineering and detailed design information about the proposed transmission facilities, relates details about the transmission of energy, which information could be useful to a person planning an attack on critical infrastructure and does not simply give the general location of the critical infrastructure. That information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552. In accordance with Sections 388.113(d)(1)(i) and (ii) of the Commission's regulations, OTP has segregated the CEII from public information and requests that CEII treatment apply for five years from the date of this filing,

⁷⁵ See, e.g., Minn. Stat. § 216B.246, subd. 2; S.D. Codified Laws § 49-32-20.

⁷⁶ *Notice of Document Labelling Guidance for Documents Submitted to or Filed With the Commission or Commission Staff*, 83 Fed. Reg. 28,631 (June 20, 2018) (directing that documents containing CEII bear a top center header on each page reading "CUI//CEII," documents containing privileged information a header reading "CUI//PRIV" and documents containing multiple information types a combined header such as "CUI//CEII/PRIV").

PUBLIC VERSION CONFIDENTIAL MATERIAL REDACTED

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the maximum initial designation period under Section 388.113(e)(1). Due to the long-lived nature of the transmission facilities and their operation, the information is expected to continue to warrant CEII treatment beyond that period. OTP will request re-designation of the material before the expiration of that period to the extent the material continues to warrant CEII treatment. The cover page and each page of the designated material are labeled in bold, capital lettering to indicate that they contain CEII, are marked "DO NOT RELEASE" and bear a top center header reading CUI//CEII in accordance with the Commission's document labeling guidance.

To the extent any appendix designated for Confidential or CEII treatment has not been finalized as of the date of this filing, OTP requests that the requested Confidential or CEII treatment apply immediately upon any subsequent filing of such appendix. OTP will include with any such subsequent filing the justification required by Section 388.112(b)(1) and Section 388.113(d)(1)(i) of the Commission's regulations.

OTP requests that the Commission notify OTP before any contemplated disclosure of the material for which privileged or CEII treatment is requested. Similar privileged and CEII treatment was requested for the corresponding provisions of operation and maintenance agreements the Commission has accepted for filing.⁷⁷

As required by Sections 388.112(b)(2)(i) and 388.113(d)(1)(iii) of the Commission's regulations, Attachment D includes a proposed form of protective agreement. All matters concerning this request for privileged and CEII treatment should be directed to the undersigned counsel.

IV. INFORMATION INCLUDED WITH THIS FILING

This filing is comprised of the following materials.

- This transmittal letter;
- Attachment A. The public version of the OMA, excising the privileged and CEII material;
- Attachment B. The non-public version of the OMA, containing the privileged material;
- Attachment C. The non-public version of Appendix B of the OMA, containing the CEII material;

⁷⁷ *N. States Power Co.*, Docket No. ER14-2725-000 (Oct. 24, 2014) (delegated letter order) (accepting the operation and maintenance agreement for the Big Stone South to Brookings County project, for which similar privileged and CEII treatment was sought); *N. States Power Co.*, Docket No. ER22-375-000 (Dec. 16, 2021) (delegated letter order) (accepting the operation and maintenance agreement for the Huntley-Wilmarth project, for which similar privileged and CEII treatment was sought); *N. States Power Co.*, Docket No. ER25-2838-000 (June 12, 2026) (delegated letter order) (accepting, as amended, the fourth amended and restated operation and maintenance agreement for the Fargo project, which incorporates the Alexandria to Big Oaks project, for which similar privileged and CEII treatment was sought).

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- Attachment D. The proposed form of protective agreement relating to the receipt of the material designated in this filing.

V. COMMUNICATIONS AND CORRESPONDENCE

All communications regarding this filing should be directed to the following individuals by placement of these individuals on the official service list for this proceeding.⁷⁸

On behalf of Otter Tail Power Company

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VI. SERVICE

A copy of this filing has been served upon WMPA and upon each of the state commissions with jurisdiction over OTP, including the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission. Consistent with Section 388.112(b)(2)(ii) of the Commission's regulations, the public version of this filing and the proposed form of protective agreement have been provided to each entity

⁷⁸ OTP requests waiver of 18 C.F.R. §§ 385.203(b)(3), to the extent necessary, to permit the designation of more than two individuals to receive service in this proceeding.

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required to be served. A courtesy copy will be provided to the Division of Electric Power Regulation (Central) in the Commission's Office of Energy Market Regulation. In addition, a copy of this filing is available at the offices of OTP at 215 South Cascade Street, Fergus Falls, MN 56537. The names and addresses of the persons served are as follows. Western Minnesota Municipal Power Agency, c/o Missouri River Energy Services, 3724 West Avera Drive, P.O. Box 88920, Sioux Falls, SD 57109-8920. Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, MN 55101. North Dakota Public Service Commission, 600 E. Boulevard Avenue, Dept. 408, Bismarck, ND 58505-0480. South Dakota Public Utilities Commission, 500 E. Capitol Avenue, Pierre, SD 57501.

VII. CONCLUSION

For all of the foregoing reasons, OTP respectfully requests that the Commission accept the OMA for filing effective September 3, 2026, and grant the requested waivers, together with such other relief as may be appropriate.

Please direct any questions regarding this filing to the undersigned counsel.

Respectfully submitted,

/s/ Brian B. Bell

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Attorneys for Otter Tail Power Company

cc: Director, Division of Electric Power Regulation (Central), Office of Energy Market Regulation

Public Version
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Attachment A

Public Version of OMA

Privileged and CEI Material Removed

RECEIVED

OCT 05 2026

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

OPERATION AND MAINTENANCE AGREEMENT

Dated as of September 3, 2026

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Appendix E	NERC Compliance Requirements
Appendix F	Illustrative Operating Expense Calculations

OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (this “**Agreement**”) is entered into and effective as of September 3, 2026 (the “**Effective Date**”), by and between Otter Tail Power Company, a corporation organized and existing under the laws of the State of Minnesota (“**OTP**”), and Western Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota (“**WMMPA**”), as Owners; and OTP as the Maintenance Provider and Control Center Authority (each as defined below). WMMPA and OTP shall be referred to herein: (i) individually as an “Owner” and collectively as the “Owners,” and (ii) individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Owners have determined that the Project (as defined below), including each Project Component (as defined below), and the Discretely Owned Substation Assets, are necessary to: (i) enhance resiliency and electric service reliability for electric customers in Minnesota and South Dakota and the surrounding region; (ii) strengthen the transmission network and bulk power electric system to meet demands for electric energy and capacity; and (iii) enhance the bulk power transmission system to support the installation of generation and capacity resources;

B. The Owners wish to provide for the efficient and reliable: (i) exercise of day-to-day operational control of each Project Component, utilizing the existing resources of the Owners to the maximum extent possible and (ii) performance of maintenance, repair, restoration and other services for each Project Component;

C. The Owners desire to enter into this Agreement with OTP as Control Center Authority for each Project Component, to provide day-to-day operational control of each Project Component, and the Control Center Authority desires to provide such services over each Project Component, in accordance with the terms and subject to the conditions of this Agreement;

D. The Owners desire to enter into this Agreement with OTP as the Maintenance Provider for each Project Component to: (i) assure a seamless transition from construction to commercial operation of each Project Component and (ii) provide maintenance, repair, restoration and other services, and the Maintenance Provider desires to assure such transition and to provide such services in accordance with the terms and subject to the conditions of this Agreement for each Project Component.

AGREEMENT

In consideration of the foregoing recitals, the mutual covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Owner and each Responsible Entity (as defined below) agrees as follows.

ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein, in Schedule 1, Generally Applicable Provisions, in the appendices attached hereto, or in notices given under this Agreement and initially capitalized, have the meanings specified below:

“Affiliate” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, a Party. For purposes of this Agreement, Missouri River Energy Services will be considered an “Affiliate” of WMMPA, notwithstanding its relational non-conformity to this definition.

“Agency Authority” has the meaning given in Section 2.4.

“Agreement” means this Operation and Maintenance Agreement, as it may be supplemented or amended.

“Applicable Energy Regulations” means the rules, Orders, regulations, practices, procedures and protocols established in compliance with Applicable Law by applicable Transmission Providers (such as the Midcontinent Independent System Operator, Inc.), electric reliability organizations (such as NERC and the Midwest Reliability Organization) and comparable Persons that are applicable to the Services, the Construction Work, the Discretely Owned Substation Assets, a Project Component or the performance of the obligations of the Parties hereunder.

“Applicable Law” means: (i) any and all laws (including all statutory enactments and common law), ordinances, constitutions, regulations, treaties, rules, codes, standards, Governmental Approvals, requirements and Orders that (a) have been adopted, enacted, implemented, promulgated, ordered, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified Person (or the Property of such Person) and (b) are applicable to the Construction Work, the Discretely Owned Substation Assets, the Services, the Project Components, or the performance of the obligations of the Parties (each in its respective capacities) under this Agreement; and (ii) Applicable Energy Regulations.

“Approved Budget Variance” has the meaning given in Section 7.5.

“Billing Cycle” has the meaning given in Section 6.2.1.

“Budget Overrun” means any expenditure or the incurrence of any Capital Expenses or any Operating Expenses (contingent or realized) that will or would reasonably be expected to cause a then current Final Component Budget to be exceeded.

“Business Day” means any day other than a Saturday, Sunday, December 24, or federal holiday.

“Capital Expenses” means expenses incurred in connection with Capital Improvements.

“Capital Improvements” means capital additions or modifications to a Project Component that are undertaken after the applicable Project Component In-Service Date and will be funded by the Owners according to Ownership Percentages pursuant to the Project Ownership Agreement in accordance with the Final Project Component Budget applicable to the Project Component. Capital Improvements include Modifications that are required by Applicable Law, but exclude (i) work undertaken pursuant to a Construction Management Agreement or a Construction Agreement with respect to a Project Component, (ii) Upgrades, and (iii) Non-Project Modifications.

“Cause” has the meaning given in Section 13.2.1.2.

“CEII” has the meaning given in Section 12.5.

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“Change in Law” means any change in, or enactment of, any Applicable Law or official published policy regarding the interpretation or enforcement of any Applicable Law by a Governmental Body that takes place after the Effective Date (or, as it relates to a Responsible Entity’s obligation with respect to a Project Component, after the Project Component In-Service Date) and affects or relates to the Services or the performance of the obligations of one or more Owners or one or more Responsible Entities under this Agreement, including the imposition of any new Governmental Approval requirements; **provided, however**, a change in Applicable Law affecting only a tax payable or any other cost of performance hereunder will not constitute a Change in Law.

“Changed Circumstance” means a: (i) Force Majeure or (ii) change in the scope of the Services directed by the Management Committee that was not contemplated in the current expense forecast or a Final Component Budget at the time such forecast was provided or such Final Component Budget was approved by the Management Committee, which change impairs the ability of the applicable Responsible Entity to perform its obligations within the applicable forecast or Final Component Budget.

“Confidential Information” has the meaning given in **Section 12.1**.

“Construction Agreements” means all contracts, agreements or arrangements establishing the terms of performance of any part of the Construction Work but specifically excluding (i) the Project Ownership Agreement, (ii) all Construction Management Agreements, (iii) the Real Property Agreements and (iv) construction contracts arising from the Discretely Owned Substation Work.

“Construction Management Agreement” means an agreement by and between the Owners and the Construction Manager that pertains to the management of construction of a Project Component.

“Construction Manager” means the Party designated by the Parties as the “Construction Manager” under a Construction Management Agreement, and permitted successors or assigns. Reference to the Construction Manager excludes any reference to the Construction Manager in any other capacity.

“Construction Work” means all activities that are necessary, desirable or incidental to placing a Project Component or Major Construction Event in service and achieving Final Completion in accordance with Good Utility Practice and the applicable Project Component Plan, other than: (i) the services to be provided under a Construction Management Agreement by the Construction Manager and (ii) the obligations of the Owners (individually or collectively through the Management Committee) under the applicable Construction Management Agreement.

“Consumables” means items such as compressed chemicals, oils, lubricants, cleaning supplies, gaskets, valve packing, light bulbs and comparable items that, by normal industry practices, are considered consumables, are replaced on a regular basis, and are required for cleaning or preparing the Project Component to be placed in service.

“Contractor” means any Person with whom the Owners or the Construction Manager enter into a Construction Agreement. Reference to an Owner as a “Contractor” excludes any reference to such Owner in any other capacity.

“Contractor Procured Materials” means all Equipment and Materials that are procured for the Project and not designated as Owner Procured Materials.

“Control Center Authority” means OTP. Reference to the Control Center Authority excludes any reference to OTP in any other capacity.

“**Control Center Costs**” has the meaning given in Section 4.2.

“**Control Center Records**” has the meaning given in Section 5.8.2.

“**Control Center Services**” has the meaning given in Section 2.2.

“**Co-Owned Substation Assets**” or “**COSAs**” means those switching and substation assets associated with the Project, including the expansion of such assets, that the Parties own jointly as tenants in common and as further described in Appendix A (if applicable).

“**COSA Fee**” means an amount calculated pursuant to Appendix F (Illustrative Operating Expense Calculations) with respect to each COSA.

“**COSA Operating Expenses**” means Operating Expenses allocable to COSAs.

“**Damages**” means any loss, charge, deficiency, tax, fine, interest, assessment, judgment, award, demand, liability, penalty or costs and expenses, including amounts paid in settlement, reasonable attorneys’ and other professional fees and reasonable costs of investigation.

“**Debt**” means for any Person, without duplication:

- (i) indebtedness of such Person for borrowed money;
- (ii) obligations of such Person evidenced by bonds, debentures, notes, mortgages or other similar instruments;
- (iii) obligations of such Person to pay (a) amounts due under financing leases; (b) the deferred purchase price of Property or services (other than accounts payable in the ordinary course of business); or (c) amounts due under capitalized or operating leases;
- (iv) obligations of such Person under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) of such Person to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of another Person;
- (v) obligations of such Person under interest rate or currency protection agreements or other hedging instruments;
- (vi) obligations of such Person to purchase securities (or other Property) that arise out of, or in connection with, the sale of the same or substantially similar securities (or Property); or
- (vii) deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument.

“**Design Criteria Guidelines**” means the requirements established in Appendix B, as such requirements are amended by the Management Committee with respect to each Project Component.

“**Discretely Owned Substation Assets**” means those assets identified in Exhibit D of the Project Ownership Agreement. Discretely Owned Substation Assets do not constitute part of the Project.

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“Discretely Owned Substation Owner” means an Owner that owns a Discretely Owned Substation Asset.

“Discretely Owned Substation Work” means all activities that are necessary, desirable or incidental for each Owner to construct its respective Discretely Owned Substation Assets.

“Easement” means the easements described in the Real Property Agreements.

“Effective Date” has the meaning given in the introductory paragraph of this Agreement.

“Emergency” means any circumstance or condition that will or could imminently be expected to materially harm the safe and reliable operation of all or a portion of the Project, the Transmission Grid or otherwise endanger public safety, Property or the environment.

“Engineering and Operating Committee” or **“E&O Committee”** means the Engineering and Operating Committee established pursuant to the Project Ownership Agreement, which committee has been delegated authority by the Management Committee to undertake the obligations and exercise the rights accorded to it under this Agreement.

“Equipment” means any product that: (i) is to be incorporated into the Project; (ii) is an assembly of operational or non-operational parts, whether motorized or manually operated; and (iii) requires service connections such as wiring.

“FERC” means the Federal Energy Regulatory Commission, a regulatory Governmental Body of the United States, or any successor thereto.

“FERC Standards of Conduct” has the meaning given in Section 12.4.

“Final Component Budget” has the meaning given in Section 7.1.

“Final Completion” means, with respect to a Project Component, the determination by the Management Committee that “Final Completion” thereof has been achieved in accordance with the terms of the Construction Management Agreement for that Project Component.

“Final Completion Date” means, with respect to a Project Component, the date determined in accordance with the terms of the Construction Management Agreement for that Project Component as the date on which Final Completion of that Project Component occurs.

“Final Order” means an Order as to which: (i) no request for stay is pending before the issuing Governmental Body, no such stay is in effect and, if any deadline for filing any such request is designated by Applicable Law, such deadline has passed; (ii) no petition for rehearing or reconsideration of such action is pending before the issuing Governmental Body and if any deadline for filing any such petition is designated by Applicable Law, such deadline has passed; (iii) the issuing Governmental Body does not have the action under reconsideration on its own motion; and (iv) no appeal to a court, or request for stay by a court, of the issuing Governmental Body’s action is pending or in effect and, if any deadline for filing any such appeal or request is designated by Applicable Law, such deadline has passed.

“Financial Records” has the meaning set forth in Section 7.10.1.

“Financial Summary Report” has the meaning set forth in Section 7.9.2.

“Financing” means: (i) Debt on terms acceptable to an Owner, the proceeds of which are intended to be used, in whole or in part, to finance the costs of construction of any Project Component (including Capital Improvements that become part of the Project), (ii) Debt as to which the Liens (including Permitted Owner Liens) of one or more Financing Parties have previously been perfected and which Liens will attach to or encumber that Owner’s Ownership Percentage in a Project Component, (iii) Debt heretofore or hereafter secured under a mortgage, deed of trust or security agreement or instrument which grants a lien on substantially all of the tangible property of either Owner, or (iv) any refinancing, renewal, or continuation, in whole or in part, of any of the foregoing.

“Financing Parties” means any and all lenders, bondholders, underwriters and financing institutions, including credit enhancers and institutional investors, providing or facilitating a Financing and any trustee(s) or agent(s) acting on any of their behalf and any successors, assigns or other transferees of any of the foregoing.

“Financing Party Agent” means any Person designated by a Financing Party to provide advice to such Financing Party with respect to the condition, operation or maintenance of a Project Component as it relates to an Owner that has or will receive Financing from such Financing Party.

“First Responder Services” has the meaning set forth in Section 3.1.

“Force Majeure” means the occurrence of an event or series of events that is beyond the reasonable control of the Person affected that hinders the performance under contract of such Person and does not result from the fault, negligence, intentional misconduct or willful misconduct of the affected Person or such Person’s failure to comply with Applicable Law or Good Utility Practice; and such event or series of events could not have been avoided by the affected Person through the exercise of reasonable diligence, including the expenditure of reasonable monies and/or taking reasonable precautionary measures, including (to the extent that such events satisfy the foregoing criteria), the following:

- (i) acts of God or the public enemy;
- (ii) epidemics, pandemics, quarantines, widespread contagion, illness, or disease (provided, however, that each Party acknowledges the effects of COVID-19 as of the Effective Date, and that no delay or failure in performance is expected based on the scope of such effects known as of the Effective Date, provided, further, that Force Majeure relief related to COVID-19 and its effects shall be permitted only to the extent of material direct impacts of COVID-19 of which the Party was not aware, and should not reasonably have anticipated, as of the Effective Date);
- (iii) expropriation or confiscation of the Project, a Project Component, or the Discretely Owned Substation Assets;
- (iv) war, terrorism, rebellion, sabotage, civil unrest or riot;
- (v) fires, explosions, hurricanes, floods, tornadoes, microbursts, other abnormally severe weather events or other natural catastrophes;
- (vi) actions or inaction of a Governmental Body affecting the obligations of a Party under this Agreement;
- (vii) a Change in Law;

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- (viii) conditions at, on or affecting the Project Real Property that could not have been reasonably anticipated, including the existence of Hazardous Substances or archeological materials;
- (ix) operating conditions on the Transmission Grid, including Emergencies; and
- (x) strikes and other labor disturbances.

Under no circumstance will an event of Force Majeure excuse a Person's obligations to make payments when due under this Agreement unless such Force Majeure event results in a failure of the Federal Reserve wire system or other failure of the banking system that deprives a Person of access to otherwise available funds.

"Funding Amount" has the meaning given in Section 6.1.

"GAAP" means generally accepted accounting principles practiced in the United States of America, as in effect from time to time, applied on a consistent basis.

"Good Reason" has the meaning given in Section 13.2.1.3.

"Good Utility Practice" means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry in the region during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition in a manner that: (i) is consistent with Applicable Law; (ii) makes due consideration for reliability, safety and protection of Equipment and Materials and the Project and the Transmission Grid; and (iii) is consistent with manufacturer's recommendations and warranties. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts generally accepted in the region.

"Governmental Approvals" means all waivers, franchises, variances, permits, authorizations, certificates, licenses and Orders of or from any Governmental Body having jurisdiction over the Owners, the Maintenance Provider, the Control Center Authority, the Services or any portion of a Project Component, as may be in effect from time to time.

"Governmental Body" means any: (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, tribal, foreign or other government; or (iii) governmental or quasi-governmental authority of any nature (including any governmental agency (including, without limitation, FERC, NERC, and state regulatory authority commissions), branch, board, commission, department, instrumentality, office or other entity, and any court), in any such case exercising, or entitled to exercise, regulatory compliance, rate-making, reliability, administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature over this Agreement, any part of the Project, the performance of the Services, the Construction Work, the Discretely Owned Substation Assets, the Project Real Property, the Construction Manager or any of the Parties. For purposes of this definition, a Person that establishes Applicable Energy Regulations will be deemed to be a Governmental Body; provided, however, an Owner will never be deemed to be a Governmental Body except when an Owner is a Transmission Provider establishing Applicable Energy Regulations in its capacity as a Person entitled to exercise functional control over a portion of the Transmission Grid in accordance with Applicable Law established by other Governmental Bodies that have jurisdiction over such Owner.

“Hazardous Substances” means petroleum hydrocarbons, including crude oil or any fraction thereof, asbestos, radon, polychlorinated biphenyls (PCBs), methane and all other substances which now are or in the future may be defined by Applicable Law as “hazardous substances,” “hazardous wastes,” “extremely hazardous wastes,” “toxic substances,” “infectious wastes,” “biohazardous wastes,” “medical wastes,” “radioactive wastes” or which are otherwise listed, defined or regulated in any manner pursuant to any Applicable Law that pertains to the protection of human health and safety or the environment.

“Indemnified Person” has the meaning given in Section 11.1.5.

“Indemnifying Person” has the meaning given in Section 11.1.5.

“Independent Accountants” has the meaning given in Section 7.10.3.

“Insolvency Event” means, with respect to a Person: (i) the Person’s (a) failure to generally pay its debts as they become due, (b) admission in writing of its inability to pay its debts as they become due or (c) making a general assignment for the benefit of creditors; (ii) any Proceeding being instituted by or against the Person seeking (a) to adjudicate it as bankrupt or insolvent, (b) liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any Applicable Law relating to bankruptcy, insolvency, reorganization or relief of debtors or (c) the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its Property and, in the case of any such Proceeding instituted against the Person, either such Proceeding remains undismissed for a period of thirty (30) days or any of the actions sought in such Proceeding occur; or (iii) the Person’s taking any action to authorize any of the actions set forth above in this definition.

“Interconnection Agreement” means an agreement providing for the terms and conditions pursuant to which a Project Component, or any portion thereof, is interconnected with the Transmission Grid or a New Interconnection.

“Inventory” means the Equipment and Materials for spare parts and replacements that are acquired and stored in accordance with an Inventory Plan.

“Inventory Plan” has the meaning given in Section 2.5.2.

“Invoice” means an invoice submitted by a Responsible Entity to the Owners, which is to be used to request funds pursuant to Sections 6.2.1 and 6.7.

“Lien” means any lien (including a mechanic’s lien, a materialmen’s lien and a supplier’s lien), security interest, option, easement, restriction on transferability, defect of title or other claim, demand, charge or encumbrance of any nature whatsoever, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership.

“Line Operating Expenses” means Operating Expenses allocable to Project Components other than COSAs.

“Local Agent” means a Subcontractor, designated by the Maintenance Provider to the Control Center Authority, to provide First Responder Services.

“Maintenance Costs” has the meaning given in Section 3.2.1.

“Maintenance Plan” has the meaning given in Section 2.5.2.

“Maintenance Provider” means OTP. Reference to the Maintenance Provider excludes any reference to OTP in any other capacity.

“Maintenance Records” has the meaning given in Section 5.8.1.

“Maintenance Report” has the meaning given in Section 7.9.1.

“Maintenance Services” has the meaning given in Section 2.1.

“Maintenance Subcontract” means each contract, purchase order or arrangement between the Maintenance Provider and a Subcontractor establishing the terms of performance of a portion of the Maintenance Services, including the purchase of Equipment and Materials, but excluding Master Contracts.

“Major Construction Event” means an undertaking to design, procure, install or construct: (i) Capital Improvements to a Project Component or a portion thereof, the cost of which exceeds Five Million Dollars (\$5,000,000) or (ii) an Upgrade.

“Management Committee” means the Management Committee established pursuant to the Project Ownership Agreement.

“Master Contract” has the meaning given in Section 3.6.1.1.

“Materials” means any products, supplies or materials that are to be incorporated into a Project Component, whether or not substantially shaped, cut, worked, mixed, finished, refined or otherwise fabricated or processed. The term “Materials” is intended to include any item that is to be incorporated into a Project Component that is not an item of Equipment or a Consumable.

“Material Adverse Event” has the meaning given in Section 5.7.

“Modifications” means any capital additions or modifications to a Project Component that are undertaken after the Project Component In-Service Date, including (i) Capital Improvements, (ii) Upgrades, (iii) New Interconnections, (iv) Co-Owned Substation Assets, and (v) Non-Project Modifications.

“Month” means a calendar month.

“NERC” means the North American Electric Reliability Corporation, a reliability organization responsible for the oversight of the regional reliability councils established to ensure the reliability and stability of the bulk electric system in North America, including the Transmission Grid.

“NERC Compliance Plan” has the meaning given in Section 5.1.1.

“NERC Compliance Requirements” means the principles and requirements set forth on **Appendix E**.

“New Interconnection” means Third Party Interconnection, transmission to transmission, or transmission to load connection to the Project made after the Effective Date.

“Non-Pro Rata Upgrade” has the meaning given in Section 4.4.1(vi) of the Project Ownership Agreement.

“Non-Project Modification” means a Modification that is not approved by the Management Committee for inclusion in a Final Component Budget and that is undertaken by one but not both of the Owners as permitted by the Project Ownership Agreement. A Non-Project Modification will not constitute part of the Project Component and is not governed by the Project Agreements, except as provided in the Project Ownership Agreement.

“Operating Expenses” means all expenses of operating and maintaining a Project Component, without duplication, including all amounts payable under the Project Agreements (other than as set forth in a Construction Management Agreement); expenses of obtaining and maintaining Governmental Approvals; expenses of performance of obligations under the Project Agreements (other than as set forth in a Construction Management Agreement); Maintenance Costs; Control Center Costs; expenses associated with Project Real Property and other assets of the Project Component; insurance premiums, deductibles, and self-insured retentions as provided in **Appendix D**; taxes (including those taxes due and payable to the State of South Dakota in respect of the services provided hereunder); utilities; licenses; impositions; general, administrative, and management expenses; consulting and professional fees; and all other fees, costs and expenses, in each case necessary for the operation and maintenance of a Project Component and the conduct of the business of the Owners as tenants-in-common. For clarity, Operating Expenses include both Line Operating Expenses and COSA Operating Expenses. The following do not constitute Operating Expenses for a Project Component: (i) expenses of any Financing sought or obtained by an Owner; (ii) amounts paid by either Owner to a Transmission Grid operator or a regional transmission organization; (iii) expenses of either Owner that are not related to a Project Component; ; (iv) expenses of either Owner that are related to a Project Component but have not been approved by the Management Committee or approved pursuant to a dispute resolution process; (v) expenses for which an individual Owner, the Construction Manager, the Maintenance Provider or the Control Center Authority is solely responsible under a Project Agreement (other than in respect of its Ownership Percentage); (vi) CM Costs (as defined in the applicable Construction Management Agreement); or (vii) expenses incurred by a Party in connection with improvements to Discretely Owned Substation Assets.

“Order” means any judgment, award, decision, directive, consent decree, injunction (whether temporary, preliminary or permanent), ruling, writ or order adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body or arbitrator (but as to an arbitrator, with respect to injunctive and other equitable relief, only to the extent permitted by this Agreement) that is binding on any Person or its Property under Applicable Law.

“OTP” has the meaning given in the first paragraph of this Agreement.

“Owner” means each Person set forth in the preamble that is a party to this Agreement; provided, however, the term “Owner”: (i) excludes any Person whose Ownership Percentage becomes zero in accordance with the terms of this Agreement from and after the effective date when its Ownership Percentage became zero; provided, further, that any such Person whose Ownership Percentage becomes zero is not released from its obligations under this Agreement or the Transmission Capacity Exchange Agreement to the extent the same arose, accrued or first became performable prior to the effective date when its Ownership Percentage became zero; and (ii) includes a Person that later executes a Transfer Agreement as transferee in accordance with the provisions of this Agreement from and after the effective date set forth in such Transfer Agreement. Reference to an “Owner” means an owner of an Ownership Percentage under this Agreement and excludes reference to any other capacity of such Person, including serving as a Construction Manager, Contractor, Subcontractor, Maintenance Provider or Control Center Authority.

“Ownership Percentage” has the meaning given in the Project Ownership Agreement.

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“Owner Procured Materials” means the items of Equipment and Materials proposed in the procurement plan for a Project Component other than such items that the Management Committee, after consultation with the Maintenance Provider, directs the Maintenance Provider not to procure.

“Party” or **“Parties”** means the Persons executing this Agreement, such Persons: (i) individually, in their respective separate capacities as an Owner or Responsible Entity, are referred to herein as a Party and (ii) are collectively referred to herein as the Parties.

“Permitted Liens” has the meaning given in Section 3.12.

“Permitted Owner Lien” means a Lien against the Ownership Percentage of either Owner that such Owner grants, or has granted, to a Financing Party.

“Person” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Body or other entity with legal constitution under Applicable Law.

“Proceeding” means any suit, litigation, arbitration, hearing, audit, investigation or other action (whether civil, criminal, administrative or investigative) commenced, brought, conducted, heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Procured Materials” means Owner Procured Materials and Contractor Procured Materials, in the aggregate.

“Project” means all Project Components. The Project does not include Discretely Owned Substation Assets or Non-Project Modifications.

“Project Agreements” means this Agreement, the Project Ownership Agreement, the Construction Management Agreement, the Transmission Capacity Exchange Agreement, Transmission Easement Agreements and any other contract or agreement designated by the Management Committee as a “Project Agreement” for the Project or any Project Component, which in no event may include (i) the Construction Agreements, (ii) the Real Property Agreements, or (iii) any contract or agreement that relates to the Discretely Owned Substation Assets or Non-Project Modifications, except in the case of agreements between the Owners with respect to such assets.

“Project Component” means all (i) Project Phases; (ii) Co-Owned Substation Assets; (iii) Capital Improvements; (iv) Upgrades; (v) Project Real Property and all Property interests that arise in connection with the Project Real Property; (vi) New Interconnections; and (vii) all other Property related to or associated with the Project Real Property in which the Owners have joint right, title or interest, including the Governmental Approvals, the Project Agreements, the Procured Materials, the Construction Agreements and the Real Property Agreements.

“Project Component In-Service Date” means the date on which a Project Component is placed in service and the Maintenance Provider and the Control Center Authority begin performance of the Maintenance Services and the Control Center Services for such Project Component, respectively.

“Project Component Plan” has the meaning as set forth in the Construction Management Agreement for the applicable Project Component.

“Project Insurance” means the insurance coverages required to be obtained in accordance with Appendix D, as it may be amended by the Management Committee.

“Project Ownership Agreement” means that certain Project Ownership Agreement between the Parties, dated September 3, 2026, as amended and restated as provided therein.

“Project Phases” means those certain transmission line segments associated with the Project that the Parties own jointly as tenants in common and as further described in **Appendix A**.

“Project Real Property” means the fee interests, licenses, rights-of-way, Easements, access and egress rights and other real property interests on which a Project Component is to be located, including any licenses, rights-of-way, Easements and other real property interests necessary for access to and egress from a Project Component.

“Property” means any kind of property or asset, whether real, personal, mixed, tangible or intangible.

“Proposed Project Component Budget” means a five-year budget describing Capital Expenses and Operating Expenses that the E&O Committee recommends to the Management Committee with respect to each Project Component.

“Real Property Agreements” means contracts, agreements, instruments or arrangements providing for the acquisition of Project Real Property.

“Responsible Entity” has the meaning given in **Section 2.5.1**.

“SCADA System” means a supervisory control and data acquisition system.

“Scheduled/Unscheduled Maintenance Services” has the meaning given in **Section 3.1**.

“Scheduled Outage” means a planned interruption or reduction of the capability of a Project Component to provide transmission services that is coordinated in advance with the Owners and with the applicable Transmission Provider in accordance with the Applicable Energy Regulations.

“Services Plan Review” has the meaning given in **Section 5.5**.

“Services” means, collectively, the Control Center Services and the Maintenance Services.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York or a successor administrator of the secured overnight financing rate.

“South Dakota CET” means contractor excise tax due and payable under the laws of the State of South Dakota.

“Subcontractor” means a Third Party subcontractor that executes a Maintenance Subcontract.

“Tariff” has the meaning given in **Section 14.2.1.2**.

“Term” has the meaning given in **Section 13.1**.

“Termination Period” has the meaning given in **Section 13.2.2**.

“Third Party” means any Person that is neither a signatory nor an Affiliate of a Party to this Agreement.

“Third Party Claim” means any claim asserted by a Third Party, other than a Third Party Environmental Claim, and resulting Damages, including claims arising from: (i) personal injury to persons, including death; (ii) theft or loss of or damage to Property; or (iii) violations of Applicable Law.

“Third Party Environmental Claim” means any claim asserted by a Third Party and resulting Damages, arising from: (i) the spill, discharge or other release of a Hazardous Substance into the environment or (ii) conditions related to Hazardous Substances that give rise to strict or vicarious liability, in each case, that give rise to personal injury to individuals, including death, loss of or damage to property or other liability under Applicable Law.

“Transfer Agreement” has the meaning given in the Project Ownership Agreement, as applied to each Project Component.

“Transmission Capacity Exchange Agreement” means that certain Transmission Capacity Exchange Agreement by and between the Owners to be entered into after the Effective Date and as may be further amended and restated from time to time, whereby each Owner grants to the other Owner all rights and benefits of ownership of a Project Component in proportion to each Owner’s Owner Percentage, as more particularly described therein.

“Transmission Easement Agreements” has the meaning given in the Project Ownership Agreement.

“Transmission Grid” means the electric transmission system to which each Project Component will be directly interconnected and of which the Project Component will become a part.

“Transmission Information” has the meaning given in Section 12.4.

“Transmission Provider” means any Person, including an Owner, who exercises functional control over the operation of a portion of the Transmission Grid as necessary to provide transmission service under a tariff, rate schedule or other agreement.

“Unscheduled Outage” means any interruption or removal from service of a Project Component other than as the result of a Scheduled Outage.

“Upgrade” means a Modification undertaken after the Project Component In-Service Date that increases the Project capacity, whether such Upgrade is a Pro-Rata Upgrade or a Non-Pro Rata Upgrade.

“WMPMA” has the meaning given in the first paragraph of this Agreement.

“Year” means calendar year of the Term, with the first Year of this Agreement starting on the Effective Date and ending on December 31, 2026.

- 1.2 Generally Applicable Provisions.** Schedule 1, Generally Applicable Provisions, contains dispute resolution and other general provisions, all of which are incorporated by reference as if set forth herein in their entirety.
- 1.3 Representative Designation.** WMPMA designates Missouri River Energy Services as its representative for the purpose of performing WMPMA’s responsibilities and obligations under this Agreement.

ARTICLE 2 ENGAGEMENT AND MOBILIZATION

- 2.1 Engagement of Maintenance Provider.** Each Owner hereby appoints and retains the Maintenance Provider, on the terms and conditions set forth herein, to provide the services set forth in Article 3 and the other provisions of this Agreement as applicable to the Maintenance Provider with respect to each Project Component (the “**Maintenance Services**”). The Maintenance Provider hereby accepts such appointment and agrees to perform the Maintenance Services as an independent contractor.
- 2.2 Engagement of Control Center Authority.** Each Owner hereby appoints and retains the Control Center Authority, on the terms and conditions set forth herein, to provide the services set forth in Article 4 and the other provisions of this Agreement as applicable to the Control Center Authority with respect to each Project Component (the “**Control Center Services**”). The Control Center Authority hereby accepts such appointment and agrees to perform the Control Center Services as an independent contractor.
- 2.3 Agency Authority.** Subject to the terms and conditions set forth in this Agreement, each Owner designates and appoints the Maintenance Provider as its designated and disclosed agent to carry out, on behalf of such Owner, the following services and the Maintenance Provider accepts such appointment with respect to the following:
- (i) purchasing of Equipment, Materials, Consumables and Services from Third Parties;
 - (ii) undertaking day-to-day ministerial operational activities and making day-to-day ministerial operational decisions relating to the Easements in the ordinary course of business, including (a) authorizing payments to landowners for amounts to be paid in connection with the Real Property Agreements; (b) authorizing payments for Damages to landscaping, roads and driveways, livestock, crops, fields and other landowner Property caused in connection with the maintenance of a Project Component; (c) approving or denying landowner requests to plant trees or construct other improvements within the Project Real Property, in accordance with Good Utility Practice; and (d) obtaining insurance relating to the Project Real Property; and
 - (iii) amending the Real Property Agreements to correct non-substantive errors or to match the actual location of the transmission facilities with the legally described Project Real Property areas.
- 2.4 Agency Authority Limited.** The Maintenance Provider’s agency authority to act as agent for and on behalf of each Owner is specifically set forth in Section 2.3 (“**Agency Authority**”). No authority to act as an agent hereunder is created, implied or bestowed on the Maintenance Provider by this Agreement for any other purpose whatsoever. In those matters where the Maintenance Provider will exercise Agency Authority and act as the agent for and on behalf of the Owners: (i) the Maintenance Services will be undertaken as a disclosed agent for and on behalf of each of the Owners, and (ii) the Agency Authority of the Maintenance Provider is limited to binding the Owners severally (and not jointly), except with the prior written consent of the Management Committee. Without limiting the foregoing, the Maintenance Provider is expressly not authorized to:
- (i) mortgage, grant Liens against or otherwise encumber the Project Real Property;

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- (ii) transfer, assign or otherwise dispose of any interests in the Project Real Property;
or
- (iii) appear on behalf of the Owners in litigation relating to the Project Real Property.

The Owners, acting through the Management Committee, retain the right to further limit the scope of Agency Authority granted in **Section 2.3**.

2.5 Mobilization.

2.5.1 **Commencement of Services.** Services to be provided under this Agreement with respect to each Project Component will not be needed until a reasonable time prior to the Project Component In-Service Date and then are only to be required from, and provided by, the Maintenance Provider and the Control Center Authority (each, a “**Responsible Entity**”). The estimated Project Component In-Service Date for each Project Component shall be as designated by the Construction Manager pursuant to the terms of the Construction Management Agreement applicable to the Project Component.

2.5.2 **Plans.** The E&O Committee, in coordination with the Responsible Entities, shall develop the following for each Project Component: (i) a rolling five (5) year maintenance plan, which shall include both scheduled maintenance plans as well as contingencies for unscheduled Project Component maintenance (the “**Maintenance Plan**”), and (ii) an inventory plan, which plan will at a minimum include a description of the Inventory strategy, the locations at which Inventory will customarily be held, the Equipment and Materials for which a minimum level of Inventory may be maintained, the minimum levels of such key items of Inventory, and other information deemed appropriate by the E&O Committee (“**Inventory Plan**”). The Owners intend that the Inventory Plan will generally provide that the Maintenance Provider will not maintain a dedicated Inventory for the Project but will instead rely on Maintenance Provider Inventory applicable to the Project; provided, however, the Management Committee may direct the Maintenance Provider to: (A) maintain temporary dedicated Inventory for the Project depending on the amount of Equipment and Material remaining after Final Completion of a Project Component, and (B) obtain and maintain specific items of dedicated Inventory for the Project in stipulated quantities if and as may be directed from time to time by the E&O Committee. The Maintenance Provider shall maintain reasonable levels of Inventory and shall make it available for the Project on an equitable basis without undue preference given by the Maintenance Provider to either Owner or other facilities of either Owner. Both the initial Maintenance Plan and the initial Inventory Plan shall be accompanied by forecasts of the annual cost thereof. The Maintenance Provider shall include within the forecasted cost of Maintenance Services a forecasted annual contingency for the performance of Scheduled/Unscheduled Maintenance Services that may be required. The Maintenance Provider may amend the portion of the Maintenance Plan as it relates to the associated forecast on notice to the E&O Committee. The Inventory Plan may be amended by the E&O Committee from time to time.

ARTICLE 3 MAINTENANCE SERVICES AND OTHER OBLIGATIONS

3.1 **Maintenance Services.** From and after the applicable Project Component In-Service Date, the Maintenance Provider shall provide vegetation management, outage scheduling services, security, maintenance, repair and restoration services (the “**Scheduled/Unscheduled Maintenance Services**”); and first responder services, such as observation, inspection and assessment services,

at the request of the Control Center Authority, to determine the physical condition of the Project Component, switching and other services in the event of an Emergency to isolate equipment in support of system restoration or to maintain safety until the Maintenance Provider can complete permanent repairs to the Project Component (“**First Responder Services**”); and such other services as are provided for in this Agreement or otherwise agreed to by the Maintenance Provider and the E&O Committee. The Scheduled Maintenance Services and First Responder Services shall be performed in accordance with **Section 3.3** and a manner that is substantially similar to those services that the Maintenance Provider performs for its own transmission lines.

3.1.1 Maintenance Plan.

3.1.1.1 Annual Update. No later than May 1 of each year the Maintenance Provider shall prepare a recommended update to the Maintenance Plan and the associated cost thereof for the immediately following five (5) years and deliver it to each member of the E&O Committee.

3.1.1.2 Subsequent Changes. The Maintenance Provider shall notify the E&O Committee of any material changes required in the Maintenance Plan (together with any change in the forecasted cost thereof) as promptly as possible after learning of the necessity of such changes for each applicable Project Component.

3.1.2 First Responder Services.

3.1.2.1 Performance of First Responder Services. The Maintenance Provider shall use Good Utility Practice to plan for and schedule staffing and equipment sufficient for First Responder Services.

3.1.2.2 Maintenance Provider Responsibilities. Upon the request of the Control Center Authority, the Maintenance Provider shall mobilize to perform the First Responder Services and shall use commercially reasonable efforts to perform such services within the time frame requested by the Control Center Authority in accordance with the terms and conditions of this Agreement. The Maintenance Provider shall provide status reports as reasonably requested by the Control Center Authority. The Maintenance Provider and the Control Center Authority shall promptly notify each other of any material change in the timeframe needs or estimates, together with the reason for such change.

3.1.3 Inventory and Warehousing.

3.1.3.1 Requirements. To the extent not otherwise made available to it by the Construction Manager, the Maintenance Provider shall procure the Inventory required for the performance of its Maintenance Services in accordance with the Inventory Plan. To the extent applicable, Inventory procured by Maintenance Provider shall comply with the applicable Design Criteria Guidelines for such Project Component. The Maintenance Provider shall provide the E&O Committee a report annually (or as otherwise requested by the E&O Committee) reviewing the Inventory for the Project, including the maintenance and implementation of the Inventory Plan.

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- 3.1.3.2 Inventory Plan. At the request of the E&O Committee, the Maintenance Provider shall deliver an update to the Inventory Plan.
- 3.1.3.3 Owner's Inventory. The Maintenance Provider, in accordance with the Inventory Plan, shall use spare parts, materials or equipment from other inventories it maintains in connection with its other business operations that are unrelated to the Project; **provided**, that when any such items are used for the Project, the replacement cost thereof constitutes a Maintenance Cost and will be reimbursed in accordance with the provisions of **Appendix C**.
- 3.1.3.4 Surplus Inventory. Subject to **Section 3.11**, Inventory procured exclusively for the Project and paid for by the Owners but no longer needed by the Maintenance Provider should be disposed of at the direction of the E&O Committee.
- 3.1.4 **Capital Improvements**. The Maintenance Provider shall undertake or arrange for the engineering, procurement, construction or installation of Capital Improvements to the extent specified in the Final Project Component Budget. Capital Improvements with an annual contract value equal to or less than One Hundred Thousand Dollars (\$100,000) may be included in the applicable Final Project Component Budget for informational purposes, but will not be subject to prior Management Committee approval. The Maintenance Provider will include each such Capital Improvement in its reports pursuant to **Section 7.9**.

3.2 Costs.

- 3.2.1 **Maintenance Costs**. Except as otherwise provided in this Agreement, the costs incurred by the Maintenance Provider in the performance of the Maintenance Services ("Maintenance Costs") will be reimbursable as part of the Operating Expenses in accordance with **Article 6** and **Appendix C** and **Appendix F**, as applicable and include, without duplication, the following:
- (i) amounts incurred by the Maintenance Provider in connection with the performance of the Maintenance Services as determined in accordance with **Appendix C** and **Appendix F**, as applicable;
 - (ii) amounts due to Third Party contractors (including Subcontractors), consultants, legal counsel and other Persons performing portions of the Maintenance Services;
 - (iii) costs related to the acquisition of Equipment and Materials, including Inventory in accordance with the Inventory Plan;
 - (iv) costs of premiums, deductibles and self-insured retentions for Project Insurance, to the extent such Project Insurance is (a) required by **Appendix D** and (b) specifically designated as a Maintenance Cost by the terms of **Appendix C** (except as otherwise provided in **Appendix D**) and **Appendix F**, as applicable, or by action of the Management Committee;
 - (v) costs of the Maintenance Provider attributable to the Maintenance Services and relating to discharging and paying any liability, loss, Damage or expense,

including attorneys' fees and other costs of defending, settling or otherwise administering Third Party Claims or Third Party Environmental Claims, except to the extent the Maintenance Provider is obligated to indemnify the Owners pursuant to **Section 11.1.2**;

- (vi) sales and use taxes and other taxes arising from and payable to any Governmental Body, payments in lieu of taxes, and fees related to Governmental Approvals, arising out of the performance of the Maintenance Services, Real Property Agreements or otherwise attributable to the performance of the Maintenance Services, excluding income, gross receipts, franchise or taxes similarly imposed or assessed on the results of operations of the Maintenance Provider or either Owner;
- (vii) any other costs incurred by the Maintenance Provider attributable to the performance of the Maintenance Services, including (net of any reductions or adjustments received with respect thereto) rental charges, royalties and fees, professional services fees and costs incurred in connection with, or arising out of, performance bonds, security, utilities, safety, transport, storage and telecommunications;
- (viii) costs that are (a) stated to be Maintenance Costs pursuant to this Agreement or (b) determined by the Management Committee to be Maintenance Costs;
- (ix) costs incurred in connection with winding-up activities, as described in **Section 13.2.3.4**, and costs incurred in connection with termination of the Maintenance Provider, as described in **Section 13.2.3.5**; and
- (x) payments to landowners for amounts required by the Management Committee to be paid after the term of the applicable Construction Management Agreement in respect of any of the applicable Real Property Agreements.

3.2.2 **Costs Not Chargeable to Project.** The provisions of **Section 3.2.1** to the contrary notwithstanding, the following do not constitute Maintenance Costs:

- (i) costs of the Maintenance Provider associated with the preparation or negotiation of (a) the Project Agreements or amendments thereto or (b) the commercial terms and conditions of any subcontract with an Affiliate or amendments or change orders thereto;
- (ii) costs incurred by either Owner in performing functions of the Management Committee, the E&O Committee or any other committee established pursuant to any of the Project Agreements and expenses of its personnel while performing such functions;
- (iii) costs of insurance (including premiums, deductibles and self-insured retentions) purchased by any individual Owner, except as specifically provided in **Appendix D**, as it may be amended by the Management Committee;
- (iv) costs incurred by the Maintenance Provider in connection with its indemnification obligations set forth in **Article 11**;

- (v) the cost of complying with conditions specified in any Governmental Approval obtained by an Owner granted or issued by Final Order that are not generally applicable to the Owners collectively but are imposed on an individual Owner;
- (vi) without duplication of the costs described in **clause (iv)** above, costs that arise from the Maintenance Provider's failure to perform its obligations in accordance with this Agreement, which failure is the result of the Maintenance Provider's (a) gross negligence (in an aggregate amount equal to or less than the limit of liability set forth in **Section 14.2.1**) or (b) willful misconduct or intentional misconduct; and
- (vii) costs that are excluded as Maintenance Costs by the express terms of this Agreement.

3.2.3 **Insurance Proceeds Not Constituting Maintenance Costs.** To the extent that proceeds of insurance required to be procured pursuant to **Appendix D** are paid or recovered in respect of Maintenance Costs, such proceeds will be deducted or offset against the amount of Maintenance Costs incurred therefor.

3.3 Standard of Care. The Maintenance Provider shall perform the Maintenance Services and maintain each Project Component in accordance with: (i) Applicable Law; (ii) Good Utility Practice; (iii) this Agreement and the Interconnection Agreements; (iv) the requirements of applicable insurance policies then in effect and which have been secured by or provided to the Maintenance Provider for the Project Component or the Services; and (v) the Real Property Agreements.

3.4 Instructions and Reliance. The Maintenance Provider may request: (i) a meeting with the E&O Committee or Management Committee or (ii) instruction from the E&O Committee or Management Committee, in each case prior to taking action (to the extent practicable), with respect to any material matter contemplated by this Agreement. All such requests shall be in writing and describe the matter requiring discussion or instruction. The Management Committee or E&O Committee, as appropriate, shall meet with (including over phone or virtually) the Maintenance Provider or issue its instructions within ten (10) days after receipt of the request therefor. The Maintenance Provider may defer action (to the extent practicable) that is dependent upon such discussion or instruction pending such meeting or receipt of instructions from the Management Committee or E&O Committee, as appropriate.

3.5 Subcontracting. Subject to the terms and conditions set forth herein, the Maintenance Provider will have the right to use Subcontractors or contractors under Master Contracts to perform or provide portions of the Maintenance Services; **provided**, that the Maintenance Provider: (i) consults in good faith with the E&O Committee prior to entering into any Maintenance Subcontract or Master Contract with an annual contract value equal to or in excess of [REDACTED]; (ii) complies with **Section 3.6.1.1**; (iii) manages and coordinates the Maintenance Services performed or provided by each Subcontractor; and (iv) remains liable to the Owners for any Maintenance Services performed (or failed to be performed) by others to the same extent as if the Maintenance Provider had performed such Maintenance Services.

3.6 Contracting Responsibilities.

3.6.1 **Maintenance Subcontracts.**

3.6.1.1 **Contracts and Bidding Requirements.** The Maintenance Provider shall engage in a competitive selection process with respect to procuring services or Equipment and Materials of acceptable quality, with a total contract value for a single annual period in excess of [REDACTED], except: (i) if, as a practical matter, there is only one provider reasonably capable of providing the services, Equipment and Materials, or both; (ii) if the services or Equipment and Materials are being procured under an agreement that the Maintenance Provider utilizes to procure such services or Equipment and Material in its non-Project-related business and as to which the Maintenance Provider's internal, generally applicable, competitive selection procurement procedures have been followed in all material respects (each, a "**Master Contract**"); or (iii) as otherwise agreed in advance by the E&O Committee.

3.6.1.2 **Administration and Reporting.** The Maintenance Provider shall administer and enforce, in all material respects, for the benefit of the Owners, the terms of the agreements under which services, Equipment and Materials, or both, are procured.

3.6.1.3 **Discounts.** The Maintenance Provider shall use commercially reasonable efforts to secure available discounts, rebates or similar economic advantages that may be available in connection with procuring services, Equipment or Materials.

3.7 Title and Risk of Loss to Equipment and Materials. Transfer of title and passage and assumption of risk of loss of Equipment and Materials procured by the Maintenance Provider for the Project will be determined as follows, except as otherwise determined by the E&O Committee.

3.7.1 Risk of loss of spare parts and other items of Inventory procured by or for the Owners while in transit remains with the Owners, except as otherwise provided in the purchase order(s) for such items.

3.7.2 Risk of loss of spare parts and other items of Inventory procured by or specifically for the Owners (including under Master Contracts) but stored by the Maintenance Provider on property owned or controlled by the Maintenance Provider remains with the Owners, except to the extent such items are covered by insurance maintained by the Maintenance Provider and the Maintenance Provider actually receives proceeds of insurance in respect of such items (after satisfaction of deductibles and self-insured retentions). The Maintenance Provider shall maintain and make available upon request a current list of all items of Inventory that were procured by or specifically for the Owners but are stored by the Maintenance Provider on property owned or controlled by the Maintenance Provider as described in this section.

3.7.3 Risk of loss of spare parts and other items of Inventory procured by, or from existing inventory of, the Maintenance Provider is borne by the Maintenance Provider until the Maintenance Provider has irrevocably committed to provide such items of Inventory to the Owners. If the Inventory is fully segregated for use on behalf of the Owners, and not commingled with other parts and inventory within the Maintenance Provider's inventory

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stores, then the Maintenance Provider shall be deemed to have “irrevocably committed” such Inventory to the Owners. The Maintenance Provider shall maintain and make available upon request a current list of all items of Inventory that are “irrevocably committed” to the Owners as described in this section.

- 3.8 Claims Against Third Parties.** Unless otherwise directed by the E&O Committee, the Maintenance Provider, on notice to the E&O Committee, has the authority to investigate, present, prosecute, settle or enforce any and all claims on behalf of itself and the Owners against: (i) any Subcontractor arising out of a Maintenance Subcontract, **provided** that the reasonable value of such claim does not exceed [REDACTED]; (ii) vendors of Equipment and Materials, **provided** that the reasonable value of such claim does not exceed [REDACTED] and (iii) the counterparty to any Master Contract in respect of services, Equipment and Materials, or both, purchased by the Maintenance Provider for the applicable Project Component, **provided** that the reasonable value of such claim does not exceed [REDACTED]. The Maintenance Provider that pursues or defends such claims shall duly and regularly keep the Owners reasonably informed as to the progress of such claims. The prosecution, enforcement and defense of all other claims will be conducted as determined by the Management Committee.
- 3.9 Safety Precautions and Requirements.** The Maintenance Provider shall implement a quality assurance/control program, a safety program, a fire protection program, an accident prevention program, a substance abuse program, a waste disposal program, an environmental and Hazardous Substances controls program, a wildfire mitigation plan, and any other comparable programs necessary to comply with Applicable Law and Good Utility Practice. The Maintenance Provider shall, as quickly as practicable, notify the Management Committee orally of: (i) all serious injuries suffered by individuals in the performance of Maintenance Services, and (ii) any hazardous conditions on the Project Real Property. The Maintenance Provider shall require each Subcontractor to timely report and maintain an up-to-date log of such incidents suffered in the performance of Maintenance Services.
- 3.10 Switching and Tagging.** The Maintenance Provider shall execute all switching, tagging, blocking and clearances in the performance of its Maintenance Services in accordance with the Control Center Authority’s procedures then in effect.
- 3.11 Sale, Transfer or Disposition of Assets.** The Maintenance Provider may not sell, transfer, or dispose of any Property jointly owned by an Owner without a vote of the Management Committee approving such action, except for (a) Property whose value is equal to or greater than [REDACTED], and (b) replacements and dispositions of Property in the ordinary course of business in accordance with Good Utility Practice.
- 3.12 Liens.** The Maintenance Provider shall make reasonable commercial efforts not to permit any unsatisfied Liens filed in connection with its Maintenance Services with respect to a Project Component to remain in effect other than: (i) Liens for taxes or assessments not yet delinquent; (ii) Liens for workers’ compensation awards, unemployment insurance and other types of social benefit obligations not yet delinquent; (iii) unperfected Liens incurred in the ordinary course of business and not in connection with the borrowing of money, including Liens arising from the employment of labor or the acquisition of Equipment and Materials; and (iv) Permitted Owner Liens (collectively, “**Permitted Liens**”); **provided, however**, Maintenance Provider will not be required to discharge or otherwise satisfy a Lien filed by others in connection with the Maintenance Services as long as it is timely contesting such Lien in accordance with Applicable Law and the Property subject to such Lien is not subject to imminent sale or foreclosure. If any

such Lien (other than Permitted Liens) has not been discharged or otherwise satisfied within one hundred twenty (120) days of its perfection, the Maintenance Provider, after consultation with the Management Committee, shall make adequate provision to discharge or otherwise satisfy such Lien. The cost to discharge or otherwise satisfy a Lien of record is a Maintenance Cost, except to the extent the filing of the Lien was caused by the gross negligence, intentional misconduct or willful misconduct of the Maintenance Provider.

ARTICLE 4 CONTROL CENTER SERVICES AND OTHER OBLIGATIONS

4.1 Control Center Services. From and after each Project Component In-Service Date, the Control Center Authority shall have day-to-day operational control over such Project Component and provide, pursuant to Applicable Energy Regulations and subject to the requirements of applicable Governmental Bodies, including applicable tariffs and agreements that govern or otherwise affect the Control Center Authority, Control Center Services in accordance with Good Utility Practices. Such Control Center Services shall include services comparable to those services the Control Center Authority provides with respect to the other transmission facilities for which it exercises day-to-day operational control, including but not be limited to:

- (i) accepting and maintaining physical operation of the transmission lines;
- (ii) monitoring alarms;
- (iii) accommodating, as necessary, the effect of Modifications;
- (iv) dispatching the Maintenance Provider (or Local Agent) to perform First Responder Services;
- (v) cooperating and coordinating with the applicable Transmission Providers, Maintenance Provider, Discretely Owned Substation Owners and operators, and the E&O Committee to schedule outages and accommodate Unscheduled Outages;
- (vi) training Maintenance Provider's personnel that will be executing switching, tagging, blocking and clearances for a Project Component; and
- (vii) performing such other services as are set forth in this Agreement or are as otherwise requested by the E&O Committee and agreed to by the Control Center Authority.

4.2 Control Center Costs. Nothing in this Agreement is intended to limit the Control Center Authority from being compensated for services provided hereunder in accordance with Applicable Energy Regulations. If, and to the extent, the Control Center Authority is entitled to be reimbursed, pursuant to Applicable Energy Regulations or otherwise, for costs it expends to perform the Control Center Services allocable to a Project Component, the Control Center Authority will not be entitled to any further reimbursement hereunder. If, and to the extent, the Control Center Authority is not entitled to be reimbursed, pursuant to Applicable Energy Regulations or otherwise, for the costs it expends to perform the Control Center Services allocable to a Project Component, except as otherwise provided in this Agreement, the Control Center Authority will be entitled to be reimbursed for costs expended by it in the performance of the Control Center Services allocable to the Project Component (including costs incurred in connection with the termination of the Control Center Authority as described in

Section 13.2.3.6), which costs will be determined and calculated in a manner agreed to by the Parties that fairly allocates to the Owners the actual cost incurred by the Control Center Authority to perform the unreimbursed Control Center Services, as part of the Operating Expenses and in accordance with Article 6 and Appendix C and Appendix F, as applicable (the “Control Center Costs”).

- 4.3 Standard of Care.** The Control Center Authority shall perform the Control Center Services in accordance with: (i) Applicable Law; (ii) Good Utility Practice; (iii) this Agreement; and (iv) the requirements of applicable insurance policies then in effect that have been secured by or provided to the Control Center Authority for the Project Component or the Control Center Services.

ARTICLE 5 RESPONSIBLE ENTITY OBLIGATIONS

- 5.1 Compliance With Applicable Law.** The Owners and the Responsible Entities agree to comply with the provisions of Applicable Law in the performance of their respective obligations under this Agreement. Upon the request of a Responsible Entity, each other Party shall provide the applicable Responsible Entity with information in its possession that such Responsible Entity may reasonably require to fulfill its obligations under this Section 5.1.

5.1.1 NERC Compliance Requirements. The Owners and the Responsible Entities acknowledge the importance of: (i) compliance with NERC reliability standards applicable to the Project Component and the Responsible Entity and (ii) diligent implementation of procedures designed to meet such standards. On behalf of the Owners, the Responsible Entity for each Project Component agrees to comply with the NERC Compliance Requirements. Prior to energization of a Project Component, the Owners together with the Responsible Entity for such Project Component shall agree with the E&O Committee on a NERC Compliance Plan applicable to such Project Component that shall be consistent with the principles set forth in Appendix E (the “NERC Compliance Plan”). Upon the request of a Responsible Entity, each Owner shall provide the applicable Responsible Entity with information in its possession that such Responsible Entity may reasonably require to fulfill its obligations under this Section.

- 5.2 Change in the Scope of Maintenance Services.** The Management Committee may, at any time, request an adjustment to the scope of Maintenance Services to be provided by Maintenance Provider hereunder. Any such adjustment in the scope of Maintenance Services must be in writing and signed by the affected Parties. In the event of any material change in the scope of services to be provided by a Responsible Entity hereunder, the expense forecast, the Final Component Budget, or both, and, if applicable, the Maintenance Plan, will be equitably adjusted with respect to the applicable Project Component.
- 5.3 Governmental Approvals.** Each Responsible Entity shall take whatever actions are necessary or desirable to maintain or otherwise fulfill the performance and compliance requirements under and in connection with the Governmental Approvals with respect to a Project Component, and shall consult with the E&O Committee with respect to any material or extraordinary compliance requirements or actions. Each Owner shall provide its support, cooperation and assistance in connection therewith.
- 5.4 Insurance Obligations.** Each Responsible Entity shall comply with applicable insurance obligations imposed on it in Appendix D, as it may be modified by the Management Committee from time to time.

- 5.5 Services Plan Review.** The E&O Committee shall convene, and the Responsible Entities shall attend, periodic meetings not less frequently than annually, at mutually agreeable times and places, to, among other things, review the performance of the Services, compliance with Applicable Law, opportunities for efficiencies and cost savings in connection therewith (each, a “**Services Plan Review**”). Services Plan Review meetings may be held telephonically or virtually. The initial agenda for each such meeting will be proposed by the E&O Committee. Any Responsible Entity may suggest additional items for the agenda and the E&O Committee will amend the agenda to include such items.
- 5.6 Technical Guidelines.** The Responsible Entity shall use and comply with the technical guidelines applicable to the other transmission facilities owned by the Responsible Entity in the region.
- 5.7 Material Adverse Events.** If there is a Changed Circumstance, an Emergency or a Third Party Claim (whether insured or uninsured) (“**Material Adverse Event**”) that affects the performance of its services under this Agreement, the Responsible Entity shall give notice of the occurrence of such Material Adverse Event and provide its assessment of the impact thereof to the E&O Committee. If the additional costs caused by a Material Adverse Event are expected to cause the Final Component Budget to be exceeded, the Maintenance Provider may request that the Management Committee expedite a vote to consider whether to approve such Budget Overrun. Adjustments arising from Material Adverse Events will be specifically identified and the Maintenance Provider shall provide information concerning the actual impact of each such Material Adverse Event and amount expended as a result thereof until the full impact of such Material Adverse Event is known and incurred.
- 5.8 Service Records.**
- 5.8.1 Retention of Maintenance Records.** The Maintenance Provider shall, in accordance with its standard document retention practices, keep and retain, or cause to be kept and retained: (i) maintenance and repair records for each Project Component; (ii) records required to be maintained pursuant to Applicable Energy Regulations with respect to each Project Component; (iii) all Maintenance Subcontracts and invoices, amendments and change orders thereto; (iv) all records relating to Project Insurance or claims thereunder in which the Maintenance Provider is involved; and (v) other documents related to the performance of the Maintenance Services as requested by the E&O Committee (“**Maintenance Records**”).
- 5.8.2 Retention of Control Center Records.** The Control Center Authority shall, in accordance with its standard document retention practices, keep and retain, or cause to be kept and retained: (i) logs, SCADA System data and similar information and (ii) records required to be maintained pursuant to Applicable Energy Regulations (“**Control Center Records**”).
- 5.8.3 Inspection.** Subject to Applicable Law, each Responsible Entity shall make all Maintenance Records or Control Center Records it is required to retain under this Agreement available for inspection and audit by either Owner at such Responsible Entity’s principal place of business or other agreed location. Each Owner, at its own expense, will be entitled to audit or otherwise inspect (and copy) such records during business hours on at least five (5) Business Days’ notice to the Responsible Entity. Each Owner agrees that it will endeavor to coordinate its requests for inspection or audit with the other Owner, and the Responsible Entities, as applicable, agree to cooperate with such audit or inspection upon request.

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- 5.9 Labor and Personnel.** The Responsible Entity shall provide and make available all labor and professional managerial field service, administrative and other personnel as are reasonably necessary to perform the services required of it hereunder, which may be the employees of the Responsible Entity, its Affiliates or Subcontractors.
- 5.10 Safety and Training Programs.** Each Responsible Entity shall train its personnel in any and all services to be performed by such Responsible Entity under this Agreement. The Responsible Entity shall provide sufficient training to ensure that, as is applicable to the tasks assigned, its personnel are knowledgeable of Applicable Energy Regulations and Good Utility Practice and capable of performing in compliance therewith.
- 5.11 Timely Performance.** Each Responsible Entity shall notify the E&O Committee promptly of any circumstance that has become known to such Responsible Entity that has or will have the potential to limit the ability of such Responsible Entity to timely perform the Maintenance Services or Control Center Services, as applicable. Any such Responsible Entity shall identify any actions that it has taken or proposes to take to overcome any such circumstance.
- 5.12 End of Term Obligations.** Upon expiration of the Term, or any earlier termination of the services of any Responsible Entity, certain of the services required of such Responsible Entity may not have been entirely performed and additional services may be necessary. Accordingly, upon the request of the E&O Committee, each Owner and each Responsible Entity agrees to negotiate the terms and conditions for specific post-termination transition services on substantially the same payment and liability terms as are set forth in this Agreement.

ARTICLE 6 FUNDING FOR SERVICES

- 6.1 Payment.** Each Responsible Entity is entitled to be reimbursed for Operating Expenses expended by it in the performance of the Services, as appropriate for each Project Component, as set forth in this **Article 6** (the “**Funding Amount**”), except as expressly otherwise provided herein. Subject to **Section 14.2**, a Responsible Entity shall: (i) be responsible for costs incurred by it in the performance of the Services, as appropriate, that arise from its gross negligence (in an aggregate amount not to exceed the limit of liability set forth in **Section 14.2.1**), willful misconduct, or intentional misconduct and (ii) not seek reimbursement from the Owners for such costs
- 6.2 Invoices.**
- 6.2.1 Invoices.** Except as otherwise provided hereunder, Responsible Entities will be entitled to submit Invoices to each Owner on a quarterly basis or as otherwise determined by the E&O Committee (the “**Billing Cycle**”). Each Responsible Entity should submit an Invoice for the services performed hereunder by the twentieth (20th) day following the end of each Billing Cycle. Each Owner shall remit the invoiced amount to an invoicing Maintenance Provider in accordance with **Section 6.4**.
- 6.2.2 Supporting Documentation.** Subject to **Section 7.10.2**, the Maintenance Provider shall make available the following information to the extent reasonably available to it:
- (i) the basis for the amount invoiced in accordance with the provisions of **Appendix C** and **Appendix F**, as applicable, for Maintenance Services or **Section 4.2** for Control Center Services, as applicable;

- (ii) sales and use tax information as required by the Owners;
- (iii) documentation reasonably required by an Owner to identify asset replacements and associated values for tax or accounting purposes; and
- (iv) such other information as may be reasonably requested by the E&O Committee or any Owner.

6.2.3 **Limited Representations.** The delivery of an Invoice by a Responsible Entity constitutes a representation to the Owners that: (i) the services reflected in such Invoice have been performed; (ii) any Equipment and Materials reflected as having been delivered have been delivered; and (iii) the amounts reflected as having been paid have been paid. The foregoing representations are subject to specific qualifications expressed by the Responsible Entity in any such Invoice. The Responsible Entity shall use commercially reasonable efforts to review Maintenance Subcontract invoices that are included in an Invoice for material accuracy in accordance with Good Utility Practice.

- 6.3 **Accounts.** Each Invoice must specify with particularity the account (and all other relevant information) to which the Owners are to make payments in respect to that Invoice. The Owners will be entitled to rely on the accuracy of the information provided by the Responsible Entity. A Responsible Entity's books and records of account with respect to the provision of any services hereunder and the cost thereof must be current, complete, true and correct in all material respects.
- 6.4 **Payments.** Except with respect to those amounts properly withheld or offset hereunder, each Owner shall make full payment, in immediately available funds, of its Ownership Percentage applicable to the Project Component of the Invoices delivered by the Responsible Entity. Payments are to be made by the twentieth (20th) day following receipt of the Invoice.
- 6.5 **Billing and Allocation of COSA Operating Expenses.** The COSA Operating Expenses shall be calculated on a calendar year basis (Jan. 1-Dec. 31). The Responsible Entity shall bill each Owner for the COSA Fee (if applicable) in accordance with **Appendix F** on an annual basis, no later than July 31 of each year of the Term to account for the COSA Operating Expenses attributable to the prior calendar year. If the COSA Fee applies to any period during the Term that is not a 12-month period, the COSA Fee shall be pro-rated for the duration applicable to such COSA Fee. The Parties acknowledge that the COSA Fee if and as calculated in accordance with this Agreement, including **Appendix F**, represents a reasonable estimate of COSA Operating Expenses incurred by the Responsible Entity over the life of the Project and that payment of the COSA Fee by the Owners constitutes full reimbursement to the Responsible Entity of Operating Expenses associated with a COSA. For the avoidance of doubt, no COSA Fee will be payable by the Owners unless and until the Owners jointly own a COSA as a Project Component.
- 6.6 **Billing and Calculation of Line Operating Expenses.** The Responsible Entity shall bill each Owner, on a monthly basis or as otherwise determined by the E&O Committee, an amount equal to the actual Line Operating Expenses multiplied by the Ownership Percentage of such Owner with respect to the Project Component(s) at issue. The Parties acknowledge that payment of such Line Operating Expenses by each Owner constitutes full reimbursement to the Responsible Entity of the Line Operating Expenses of such Project Component(s).
- 6.7 **Final Payment.** Within ninety (90) days after the termination of this Agreement with respect to any Responsible Entity, such Responsible Entity shall submit a final Invoice to each Owner that

documents amounts due hereunder through the date of termination together with any termination amount permitted pursuant to Section 13.2.2.

- 6.8 Notice of Dispute and Withholding.** Without prejudicing an Owner's other rights under this Agreement, for purposes of determining the amount of payment to which the Responsible Entity is entitled in respect of an Invoice hereunder, an Owner shall promptly notify the Responsible Entity concerning any invoiced amount or portion thereof that it disputes (including where the Owner contends that there is a deficiency with respect to such Invoice or the accompanying documentation) and the basis for such dispute as soon as reasonably practicable with the objective of allowing time to resolve such dispute prior to the date on which payment with respect to the disputed matter would otherwise be due; provided, however, except as provided in the next sentence, an Owner must make timely payment of invoiced amounts pending resolution of disputed amounts. An Owner also may, after issuing a notice to the Responsible Entity, withhold all or any portion of any payment: (i) in accordance with Section 6.10 or (ii) to such extent of an undisputed overdue amount due to such Owner from the Responsible Entity under this Agreement. Notwithstanding the forgoing, if any such dispute (a) relates to COSA Operating Expenses, and (b) cannot be resolved by the Management Committee, an Owner's sole remedy to adjudicate such dispute shall be a complaint pursuant to Section 206 of the Federal Power Act.
- 6.9 Payment Not Acceptance.** Payments hereunder will neither constitute acceptance of the services provided by a Responsible Entity nor foreclose any right of audit or dispute with respect to such payments. Except as provided in Section 6.8 or 6.10, no Owner will withhold any amounts, including disputed amounts, from its payments in respect of an Invoice. Upon audit or other discovery, the applicable Responsible Entity shall refund any amount paid by an Owner in excess of amounts properly due hereunder within fifteen (15) Business Days of demand therefor, together with interest on such excess amount accrued from the date of the excess amount was paid to and including the date it is refunded calculated at SOFR.
- 6.10 Optional Payment by Owners.** If the Maintenance Provider defaults or neglects to fulfill its obligation to make undisputed payments of amounts required to be paid to a Third Party under any Maintenance Subcontract, then the Owners (acting collectively through the E&O Committee) may cause such obligation to be satisfied by paying such amounts. To the extent the amount of such payments has previously been paid to the Maintenance Provider, the Owners may set off such amounts against the Funding Amount next due by the Owners to the Maintenance Provider.
- 6.11 Amounts to be Deposited.** Within fifteen (15) Business Days after receipt of the following, the Maintenance Provider shall pay to the Owners, by depositing the following sums as directed by the E&O Committee:
- (i) funds recovered from Subcontractors and other counterparties, including backcharges and Damages, for payments previously made by the Owners except with respect to amounts recovered in respect of an indemnification obligation owed to the Responsible Entity on the part of a Subcontractor or other counterparty;
 - (ii) proceeds of the sale of surplus Equipment, Materials and Consumables; and
 - (iii) any other amounts received by the Maintenance Provider arising out of or in connection with this Agreement, which amounts are to accrue to the benefit of the Owners, collectively.

- 6.12 South Dakota Excise Tax.** The Owners hereby acknowledge that the South Dakota CET may be due and payable to the State of South Dakota with respect to some of the Maintenance Services provided by the Maintenance Provider to WMMPA with respect to the portion of a Project Component located in South Dakota, and that any such amounts due pursuant to the South Dakota CET shall be: (a) invoiced by the Responsible Entity, with such invoice reflecting only those Maintenance Services subject to CET and related to that portion of the Project Component located in South Dakota, (b) payable solely by WMMPA, and (c) remitted by the Maintenance Provider to the State of South Dakota.

ARTICLE 7 FINANCIAL MATTERS AND REPORTS

- 7.1 Final Project Component Budget.** Not later than May 1 of each Year, unless another timeframe is approved by the E&O Committee, for each Project Component, each Responsible Entity shall deliver to the E&O Committee a five (5)-year budget describing Capital Expenses for Capital Improvements that it recommends and the Operating Expenses anticipated to be incurred by it for each Year, for inclusion in the E&O Committee's consolidated Proposed Project Component Budget as required by the Project Ownership Agreement. If the Management Committee does not approve the Proposed Project Component Budget, the E&O Committee will work with the Responsible Entities to promptly re-submit a revised consolidated Proposed Project Component Budget to the Management Committee for its approval. Once the Management Committee approves a consolidated Proposed Component Budget, it becomes the "**Final Component Budget**" binding on the Maintenance Provider and Control Center Authority, subject to amendment by vote of the Management Committee from time to time and subject to Section 7.3.
- 7.2 Budget Deadlock.** If by December 1 prior to any Year during the Term, the Management Committee does not approve a Final Project Component Budget for each Project Component for the next Year, then for the forthcoming Year, until the Management Committee approves such budget, the unapproved budget proposed will not be implemented but the Final Project Component Budget for such Year, as applicable, previously approved by the Management Committee as part of the five (5) year rolling Final Project Component Budget process will remain in full force and effect until the Management Committee votes to approve a new Final Component Budget. If the applicable Year is not covered by a Final Project Component Budget, then to the extent necessary, until a new Final Component Budget is approved, the Operating Expense portion of Final Component Budget currently in effect will continue in effect of the then-current Year plus the cost of Capital Improvements that are required for the applicable Component to be maintained so as to meet the requirements of Applicable Law.
- 7.3 Limitation on Expenditures.** Except as provided below, the Maintenance Provider's Final Component Budget is intended to constitute the control document for the Responsible Entities pursuant to which the Responsible Entities may incur Capital Expenses. No Responsible Entity may incur Capital Expenses or Operating Expenses that will cause a Budget Overrun, unless: (i) pursuant to an Approved Budget Variance in accordance with Section 7.5; (ii) in connection with a Material Adverse Event; or (iii) necessary for compliance with Applicable Law (including without limitation Modifications that are required by Applicable Law).
- 7.4 Expense Forecast Overruns.** If a Responsible Entity anticipates that its forecast of the annual cost of providing Services, as applicable, is no longer accurate, it shall promptly notify the E&O Committee, specify the underlying facts and circumstances and provide an updated forecast of the amounts that are to be reimbursed by the Owners together with details concerning which Project Component(s) such amounts apply to.

- 7.5 Final Project Budget Overruns.** If a Responsible Entity or the E&O Committee has notified the Management Committee that it anticipates a Budget Overrun on a Responsible Entity's Final Component Budget, the Management Committee will issue written directions to such Responsible Entity with respect to how it is to proceed within thirty (30) days after the date on which the Management Committee received such notice. The Management Committee is not obligated to authorize a proposed Budget Overrun, except to the extent necessary to ensure an equitable adjustment in the Responsible Entity's Final Component Budget to reflect the reasonable value of any increased costs incurred in connection with a Material Adverse Event or as otherwise required to ensure compliance with Applicable Law. If the Management Committee does not approve an overrun request, the E&O Committee shall provide express direction to such Responsible Entity of the actions to be taken or refrained from by way of reducing services to be provided so as to allow the Responsible Entity to be able to operate within the applicable Final Component Budget. If a Responsible Entity does not believe that the direction provided by the E&O Committee will allow it to perform its obligations in accordance with Section 3.3 or Section 4.3, as applicable, such Responsible Entity may, by written notice, decline to further perform the affected obligations and the Management Committee shall thereafter find a replacement provider. If the Management Committee approves such Budget Overrun, such approval will constitute an "Approved Budget Variance," which will contain a detailed description of the changes to the applicable Final Component Budget required thereby.
- 7.6 Meetings.** At a Party's request, any Responsible Entity and the E&O Committee shall meet, among other things:
- (i) to review the performance of Services under this Agreement and to discuss any expense forecast, each Final Component Budget, or the status of any Maintenance Plan or any Inventory Plan;
 - (ii) to discuss any Material Adverse Event and the impact thereof on expense forecasts, any Final Component Budget, Maintenance Plans or Inventory Plans, as applicable; or
 - (iii) to review the costs incurred pursuant to Section 8.7.
- 7.7 Not Responsible for Forecasts.** The expense forecasts and each Final Component Budget prepared by a Responsible Entity represent its reasonable commercial judgment as to the amounts reflected therein in light of its experience and the application of estimation practices consistent with Good Utility Practice. Each Owner acknowledges that the Responsible Entities (individually or collectively) that seek reimbursement hereunder do not have control over the cost of labor, materials, equipment, competitive bidding or market or negotiating conditions pursuant to which the assumptions in such forecasts and Final Component Budgets relate. Accordingly, no Responsible Entity warrants or represents that bid results, negotiated prices or the monetary impact of Material Adverse Events or Emergencies will be accurately forecasted or budgeted. The Responsible Entities will not be liable to either Owner for the inaccuracy of any such expense forecast or Final Component Budget.
- 7.8 Prudency Review Undertaking.** The applicable Responsible Entity shall provide reasonable assistance and documentation to the Owners (individually or collectively) in connection with any prudency review or similar process relating to matters within the scope of this Agreement in order to address the issues identified by any reviewing Person, including any Governmental Body. Subject to Section 4.2, as applicable, services under this Section 7.8 provided for the benefit of less than all of the Owners will be charged to and payable by each such individual Owner

benefiting from the performance of such services. To the extent services provided under this **Section 7.8** are provided to the Owners collectively, the costs of providing such services are Maintenance Costs or Control Center Costs, as applicable.

7.9 Reporting Obligations.

7.9.1 **Maintenance Reports.** The Maintenance Provider shall prepare and furnish to the E&O Committee a report (each a “**Maintenance Report**”) in a format and on a schedule (not less frequently than semi-annually) as reasonably determined by the E&O Committee. The Maintenance Report will address, among other things, safety, major repairs, potential common mode concerns, Capital Improvements, and warranty items. The Maintenance Provider will use commercially reasonable efforts to provide the E&O Committee with information related to Maintenance Reports as promptly as commercially practicable if the Maintenance Provider experiences or reasonably expects that a Material Adverse Event may occur with respect to the Project Component.

7.9.2 **Financial Summary Reports.** Each Responsible Entity shall deliver to the E&O Committee a report (each a “**Financial Summary Report**”) for each Project Component in a format and on a schedule (not less frequently than semi-annually) as reasonably determined by the E&O Committee, provided that each Responsible Entity will use commercially reasonable efforts to provide the E&O Committee with information related to Financial Summary Reports as promptly as commercially practicable if a Responsible Party experiences or reasonably expects that a Material Adverse Event may occur with respect to a Project Component. Except as otherwise required by the E&O Committee, each Financial Summary Report will provide: (i) a summary of actual Maintenance Costs or Control Center Costs, as appropriate, that have been incurred during the Year and that are to be reimbursed by the Owners; (ii) a comparison of actual costs to date to the then current forecast and updated forecasted costs to the then current forecast; and (iii) the amount of and explanation for any funds deposited in accordance with **Section 6.10**. The Maintenance Provider shall, when applicable, provide similar data with respect to Capital Improvements.

7.10 Financial Record Retention and Audit.

7.10.1 **Financial Record Retention.** Each Responsible Entity submitting Invoices hereunder shall keep and retain (or cause to be kept and retained), in accordance with standard document retention practices, the following documents and records: (i) payroll records and other related personnel records related to the performance of the Services; (ii) Maintenance Subcontracts; (iii) agreements (together with amendments and change orders), invoices, receipts and similar documentation (other than Maintenance Subcontracts) for services, Equipment and Materials purchased for use in connection with a Project Component, including Master Contracts; (iv) any other records and books of account, records of monies expended, obligations incurred, credits accrued or that otherwise relate to the Project Component; and (v) with respect to any Control Center Authority that presents Invoices to the Owners, such books and records as will reasonably allow the Owners to determine the fairly allocated actual cost of the Control Center Authority’s performance of such services (“**Financial Records**”).

7.10.2 **Record Availability.** Each Responsible Entity shall make all Financial Records it is required to retain under this Agreement pursuant to **Section 7.10.1** available to the Owners or the Independent Accountants for inspection (and copying) and audit. Such

Financial Records will be available at the Responsible Entity's principal place of business or other agreed location upon at least five (5) Business Days' notice. Responsible Entities shall not be required to make Financial Records (other than Maintenance Records) available to either Owner if such availability is restricted in accordance with a protocol adopted by the Management Committee designed to avoid use of such information by the receiving Owner in manner that could violate Applicable Law.

- 7.10.3 **Independent Audit.** The Management Committee or an Owner is entitled to engage a public accounting firm experienced in utility accounting (the "**Independent Accountants**") to conduct an audit and prepare a report of Operating Expenses, including Maintenance Costs and, if applicable, Control Center Costs, and Capital Expenses expended or incurred under this Agreement during any fiscal period. To the extent applicable, such reports must be prepared in accordance with GAAP; **provided, however,** interim internal financial reports may be presented subject to year-end adjustments and may lack footnotes and other required GAAP presentation items. The Management Committee or requesting Owner shall concurrently furnish any report of the Independent Accountants prepared at the direction of the Management Committee or requesting Owner to each Owner promptly following receipt. The Owners and Responsible Entities shall reasonably cooperate with the Independent Accountants. If the results of any such audit indicate that a reconciliation of amounts paid or received by any Party is necessary, the Independent Accountants shall provide a reconciliation statement to each Party indicating the amounts to be paid or received, if any, by each Party. Subject to dispute resolution procedures, the Parties shall promptly make the payments required by the reconciliation statement within fifteen (15) Business Days of receipt of such reconciliation statement.

- 7.11 **Final Completion Report.** A Responsible Entity for a Project Component shall prepare and concurrently distribute to the Management Committee and each Owner a Final Completion report within a commercially reasonable period of time following termination of its services under this Agreement with respect to such Project Component, which must include a complete cost report for the Services, as applicable, performed during the last twelve (12) Months, together with a documentation of any amounts that may be due to such Responsible Entity upon termination as provided in **13.2.3.5** and **13.2.3.6**.

ARTICLE 8 OWNERS' RIGHTS AND DUTIES

- 8.1 **Owners Act Through Committee.** Oversight and management of matters arising under this Agreement by the Owners will, except as otherwise provided in this Agreement, be determined by the Management Committee or, to the extent of its delegated authority, the E&O Committee.

- 8.1.1 **Restriction on Rights, Duties and Responsibilities of the Management Committee.** Notwithstanding anything to the contrary in this Agreement, neither the Management Committee nor the E&O Committee will have the power or authority to direct the means, manner or methodology used by the Responsible Parties to carry out the Services.

- 8.1.2 **Rights.** Each Owner and, by delegation, the Management Committee and the E&O Committee (unless otherwise indicated below), have:

- (i) the right to receive such information (subject to **Section 7.10.2**) from the Maintenance Provider and Control Center Authority as an Owner or as the Management Committee or the E&O Committee may reasonably request;

- (ii) the right to inspect all Project Components during the Term at reasonable times without unduly hindering ongoing performance of the Maintenance Services, which right will extend to the Owners' respective invitees, including Financing Parties and Financing Party Agents (as required in connection with an Owner's Financing); and
- (iii) the right to inspect and audit Maintenance Records maintained by the Maintenance Provider and Control Center Records maintained by the Control Center Authority.

8.1.3 **Management Committee**. In all matters concerning or arising under this Agreement that require instruction or a vote of the Management Committee to be effective, each Owner will be bound by the written communications, directions, requests and decisions made by the Management Committee.

8.1.4 **E&O Committee**. In all matters concerning or arising under this Agreement that require instruction or decision of the E&O Committee to be effective, each Owner will be bound by the written communications, directions, requests and decisions made by the E&O Committee.

8.2 **Authorized Personnel**. Each Owner, Maintenance Provider and Control Center Authority, in its respective capacity, shall identify on a master notification list the names and contact information of the individuals who are authorized to sign documents such as contracts, certificates, Governmental Approvals and affidavits on their behalf and to fully bind such Person(s) to the provisions of such documents.

8.3 **Property Interests**. All Property of the Owners (which includes any and all rights and licenses, express or implied) that arise as a result of the performance of the Services accrues to the benefit of the Owners as set forth in the Project Agreements. During the Term, each Owner hereby authorizes the Maintenance Provider to use all such Property rights and interests relating to the Project Component for which it is responsible as necessary for the Maintenance Provider to properly perform the Maintenance Services on such terms as approved and permitted by this Agreement and the other Project Agreements.

8.4 **Owner Governmental Approvals and Licenses**. Each Owner shall comply with any condition applicable solely to it under the terms of any Governmental Approval that becomes a Final Order and the costs and expenses associated with compliance with such condition(s) will be the sole liability and obligation of such Owner.

8.5 **Owner's Insurance Requirements**. The Owners shall comply with the insurance obligations imposed on the Owners in **Appendix D**, as it may be modified by the Management Committee from time to time.

8.6 **Required Information**. An Owner shall provide information requested by the Maintenance Provider that is known and readily available to it, including specifications, documents and drawings of existing above ground structures and facilities, subsurface conditions (including plats or borings identifying the position of cables, lines, pipes or other underground objects) or other conditions relevant to the performance of the Maintenance Services. The information so provided is furnished as a courtesy and the Owner providing it does not guarantee the accuracy of such information and is not liable for any inaccuracy or omission therein contained, except to the extent of its willful misconduct or intentional misconduct.

- 8.7 E&O Committee Functions.** The provisions of this Agreement require the E&O Committee from time to time to, among other things, consolidate expense forecasts or Proposed Project Component Budgets, proposed Maintenance Plans, proposed Inventory Plans, or other aspects of the Services. The E&O Committee is entitled to employ the services of one or more of the Responsible Entities to provide such services and the cost thereof shall constitute a Maintenance Cost or Control Center Cost, as applicable.
- 8.8 Owner Obligations Several.** The obligation of each Owner to make payments to the applicable Responsible Entities under this Agreement is a several (and not joint) obligation (to the extent of its Ownership Percentage with respect to each Project Component). The failure of either Owner to pay any amount for which it is obligated hereunder will not relieve any other Owner from its several payment obligations hereunder.
- 8.9 Funding for Extraordinary Events.** If: (i) upon the occurrence of a Material Adverse Event or an Emergency or (ii) the Maintenance Provider desires to take advantage of discounts, rebates or similar economic advantages, and in each case, the expenditures resulting from such causes are materially in excess of the amounts it usually and customarily incurs before invoicing, then the Maintenance Provider may request the Management Committee to direct the Owners to make the estimated funds needed for such purposes available to the Maintenance Provider. The Management Committee will act within five (5) Business Days of its receipt of the Maintenance Provider's written request accompanied by reasonable documentation and support. If the Management Committee so directs, the Owners shall deposit the estimated amount as determined by the Management Committee within seven (7) Business Days of receipt by each Owner of a notice specifying the estimated amount needed.

ARTICLE 9 MAJOR CONSTRUCTION EVENTS; OTHER MAJOR EVENTS

- 9.1 Undertaking Major Construction Events.** The Owners and the Maintenance Provider recognize that the Transmission Grid is evolving and that, during the Term, Major Construction Events may occur. The Management Committee is empowered under the Project Ownership Agreement to determine the most efficient and cost-effective approach to undertaking Major Construction Events. The Maintenance Provider will consult and cooperate with the Management Committee to reasonably allow the Management Committee to plan and implement Major Construction Events, including the selection of the Person(s) that will undertake such construction. The Management Committee will negotiate the terms and conditions of any necessary agreements.
- 9.2 Payments.** Notwithstanding anything to the contrary herein, the Maintenance Provider is not expected to advance (subject to reimbursement) amounts that at any time in the aggregate exceed Five Hundred Thousand Dollars (\$500,000) in connection with the performance of the Maintenance Services, including the cost of Major Construction Events. Accordingly, the Management Committee and the Maintenance Provider shall promptly agree to an acceptable funding mechanism upon the Maintenance Provider's notice to the Management Committee that it is foreseeable that such limit could be exceeded. It is the express intent of the Owners that the Maintenance Provider will not be expected to bear the working capital costs of funding Maintenance Services at any time in excess of the limitation set forth in this **Section 9.2**.

ARTICLE 10 REPRESENTATIONS AND WARRANTIES

- 10.1 Representations and Warranties of Each Responsible Entity.** Each Responsible Entity and each Owner hereby makes the following representations and warranties, severally and not jointly,

on or as of the Effective Date, which representations and warranties survive the execution and delivery of this Agreement:

- 10.1.1 **Organization and Good Standing.** It is, as set forth in the preamble to this Agreement, a corporation organized, existing and in good standing under the laws of the state of its formation or incorporation, as the case may be, and is authorized to conduct business in each state in which authorization may be required to perform its obligations under this Agreement.
- 10.1.2 **Power and Authority.** It has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.
- 10.1.3 **Authorization.** It has taken all action required by Applicable Law and its governing documents, including its charter, in order to approve, execute and deliver this Agreement.
- 10.1.4 **No Violation.** The execution and delivery of this Agreement by it, the performance by it of its obligations hereunder and the consummation by it of the transactions contemplated herein do not and will not: (i) contravene any Applicable Law in effect as of the Effective Date or any Order in effect as of the Effective Date of any Governmental Body or arbitrator having jurisdiction over it or its Property or (ii) result in a breach or violation of any of the terms and provisions of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement in effect as of the Effective Date and to which it is a party or by which it or its Property is bound.
- 10.1.5 **Approvals and Consents.** No approval, consent or authorization of any Governmental Body or other Person is required for the execution and delivery by each Responsible Entity of this Agreement or the performance by it of its obligations hereunder, except such approvals, consents or authorizations that have been given or obtained by it and are in full force and effect.
- 10.1.6 **Binding Effect.** This Agreement has been executed and delivered by it. Assuming that each other Person executing and delivering this Agreement has all the requisite power and authority and has taken all necessary action to execute and deliver this Agreement, this Agreement is legal, valid and binding obligation on it and is enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights (e.g., bankruptcy, insolvency, moratorium) or by the exercise of judicial discretion in accordance with general principles of equity.

ARTICLE 11 INDEMNIFICATION

11.1 Third Party Indemnification.

- 11.1.1 **Indemnification by the Owners.** To the maximum extent permitted by Applicable Law, each Owner shall, severally to the extent of its Ownership Percentage in the applicable Project Component, indemnify and hold harmless each Responsible Entity, its Affiliates and its respective directors, officers, shareholders, members, partners, employees and agents from and against Third Party Claims and Third Party Environmental Claims arising from the Project (including associated defense costs), except to the extent such claims arise from the act or omission of the Responsible Entity for which the Owners are

indemnified under Section 11.1.2 or for which there is contributory negligence under Section 11.1.3.

11.1.2 **Indemnification by the Applicable Responsible Entity.** To the maximum extent permitted by Applicable Law, each Responsible Entity shall defend, indemnify and hold harmless each Owner and its Affiliates and their respective directors, officers, shareholders, members, partners, employees and agents from and against:

- (i) Third Party Claims that are caused by the applicable Responsible Entity's negligent act or omission, gross negligence, intentional misconduct or willful misconduct in connection with the performance of or failure to perform its obligations under this Agreement; **provided**, that the liability of the applicable Responsible Entity to defend, indemnify and hold harmless for a Third Party Claim arising from the applicable Responsible Entity's negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) shall not exceed the amount of proceeds recovered from Project Insurance with respect to such Third Party Claim; and
- (ii) Third Party Environmental Claims caused by the applicable Responsible Entity's negligent act or omission, gross negligence, intentional misconduct or willful misconduct in connection with the performance of or failure to perform its obligations under this Agreement; **provided**, that the liability of the applicable Responsible Entity to defend, indemnify and hold harmless for Third Party Environmental Claims arising from the applicable Responsible Entity's negligent act or omission (but not gross negligence, intentional misconduct or willful misconduct) shall not exceed the amount of proceeds recovered from Project Insurance with respect to such Third Party Claim.

11.1.3 **Responsible Party Negligence.** With respect to indemnification of Third Party Claims and Third Party Environmental Claims under Section 11.1.1 or 11.1.2, such Indemnifying Person will not be responsible for that portion of any award (whether in the Proceeding brought by the Third Party or in any subsequent Proceeding commenced by a Person to determine the allocation of liability) that another Person was negligent or grossly negligent to the extent of the specific percentage of negligence or gross negligence allocated pursuant to a judgment rendered in the Proceeding to such other Person; **provided, however**, the foregoing will not relieve the Indemnifying Person of its obligation to defend the Indemnified Person(s) in any such Third Party Claim in accordance with Section 11.1.5.

11.1.4 **Capacity of Persons.** The provisions in this Article 11 apply to a Party solely in its specified capacity and not to such Party acting in any other capacity.

11.1.5 **Conduct of Claims.** Any Person or its officers, directors, employees or agents entitled to indemnification under this Agreement for any Third Party Claim or Third Party Environmental Claim ("**Indemnified Person(s)**") shall, promptly after the receipt of notice of any legal action or claim against such Indemnified Person in respect of which indemnification may be sought pursuant to this Article 11, notify the Person from whom it seeks indemnity ("**Indemnifying Person(s)**") of such Third Party Claim or Third Party Environmental Claim. The Indemnifying Person(s) is not obligated to indemnify the Indemnified Person(s) with respect to any such claim if the Indemnified Person(s): (i) fails to notify the Indemnifying Person(s) thereof in accordance with the provisions of

this **Section 11.1.5** in sufficient time to permit the Indemnifying Person(s) timely to defend against such matter and to make a timely response thereto, including any responsive motion or answer to a complaint, petition, notice or other legal, equitable or administrative process relating to the action or claim and (ii) such failure causes material prejudice to the defense of, or otherwise damages, the Indemnifying Person(s). If a Third Party Claim or a Third Party Environmental Claim is made or brought against the Indemnified Person(s), the Indemnifying Person(s) may, or if so requested by the Indemnified Person(s), shall, assume the defense thereof with counsel of its selection reasonably acceptable to the Indemnified Person(s). In such circumstances, the Indemnified Person(s) shall: (i) at no cost or expense to the Indemnified Person(s), cooperate with the Indemnifying Person(s) and provide the Indemnifying Person(s) with such information and assistance as the Indemnifying Person(s) reasonably requests in connection with such claim and (ii) at its own expense, have the right to participate and be represented by counsel of its own choice in such claim. If the Indemnifying Person(s) assumes the defense of such claim: (a) the Indemnifying Person(s) will not be liable for any settlement thereof that is made without its consent and (b) the Indemnifying Person(s) shall control any settlement of such Third Party Claim or Third Party Environmental Claim; **provided, however**, that the Indemnifying Person(s) shall not conclude any settlement that requires any action or forbearance from action or payment (unless paid in full by the Indemnifying Person(s)) or admission by the Indemnified Person(s) or any of its Affiliates without the prior approval of the Indemnified Person(s). The obligations of an Indemnifying Person(s) will not extend to any loss, Damage or expense of whatever kind and nature (including all related costs and expenses) to the extent the same results from the taking, after the receipt of notice of such claim against the Indemnified Person(s), by the Indemnified Person(s) of any action (unless required by Applicable Law or applicable legal process) that materially prejudices the successful defense of the claim, without the prior written consent of the Indemnifying Person(s) (such consent not to be required in a case where the Indemnifying Person(s) has not assumed the defense of the Third Party Claim or Third Party Environmental Claim). The Indemnified Person(s) agrees to afford the Indemnifying Person(s) or its counsel the opportunity to be present at, and to participate in, conferences with all Persons, including Governmental Bodies, asserting any such claim against the Indemnified Person(s) covered by the indemnity contained in **Section 11.1.1** or **Section 11.1.2**, as applicable, or conferences with representatives of or counsel for such Person(s).

- 11.2 Insurer Obligations.** The provisions of this **Article 11** and **Article 14** are not to be construed so as to relieve any insurer of its obligation to pay any insurance claims in accordance with insurance policies obtained in accordance with **Appendix D**.

ARTICLE 12 CONFIDENTIALITY PROVISIONS

- 12.1 Confidentiality of Information.** It may be necessary for an Owner or Responsible Entity to provide confidential or proprietary information with respect to its participation in the Project or an Owner or Responsible Entity may agree to develop certain confidential or proprietary information as part of or in connection with the construction, operation or maintenance of the Project. Each Owner and Responsible Entity covenants, with respect to such confidential and proprietary information provided by such Owner, that any and all confidential and proprietary information so provided for use for this Agreement or the Project, whether or not it falls within the definition of "Confidential Information" as defined below, does not infringe upon or violate the rights or interests of any Third Party (including any trade secret or confidentiality rights of such Third Party). Each Owner and Responsible Entity agrees to use the confidential and

proprietary information it develops in connection with this Agreement or the Project (**provided** that the cost of developing such information has been treated as a Project Cost), and confidential and proprietary information provided to it by any other Owner or Responsible Entity or representative in connection with this Agreement (“**Confidential Information**”), solely (i) in order to participate in this Agreement and the Project or (ii) for other activities contemplated by this Agreement (each a “**Permitted Purpose**”). Each Owner and Responsible Entity will keep Confidential Information confidential and will not, and will advise its Representatives (as defined below) not to, disclose to any Person any Confidential Information in any manner whatsoever or otherwise use any Confidential Information other than for a Permitted Purpose; **provided, however,** that any Confidential Information may be disclosed to the financial, technical, legal and other professional advisors, members, employees, Financing Parties and other lenders, Affiliates and other representatives (collectively referred to as “**Representatives**”) of an Owner or Responsible Entity who may need to know such Confidential Information for the purpose of advising the Owner or Responsible Entity with respect to this Agreement or the Project and potential transferees who are subject to a confidentiality agreement; **provided, further, however,** that such Representatives are informed by the Owner or Responsible Entity of the confidential nature of the Confidential Information and that they will be bound by the confidentiality provisions of this **Article 12** to the same extent as if they were parties hereto. Each Owner and Responsible Entity agrees that it will be responsible for any breach of this **Article 12** by any of its Representatives and for any use of the Confidential Information by any of them for any purpose other than a Permitted Purpose. Written documents, electronic documents and other physical information will be deemed Confidential Information and protected hereby, only if clearly and prominently marked and identified as “CONFIDENTIAL.” Oral or other non-written communications will be deemed Confidential Information only if they are declared to be Confidential Information at the time disclosed.

12.2 Information Not Deemed Confidential Information. Notwithstanding **Section 12.1**, the term “Confidential Information” does not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by an Owner or Responsible Entity, or any of its respective Representatives in violation of **Section 12.1**; (ii) was within the possession of an Owner or Responsible Entity before its being furnished to such Party by or on behalf of any other Party; (iii) becomes available to an Owner or Responsible Party on a non-confidential basis from a source other than any other Party or any of their respective Representatives, **provided** that such recipient does not know that such source is bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other Person with respect to such information; or (iv) is independently developed by an Owner or Responsible Party, without access to the Confidential Information.

12.3 Requirement to Disclose Confidential Information. If an Owner or Responsible Entity (i) is required by legal process, a Governmental Body, any electric reliability organization or any regional transmission organization or independent system operator to the extent such organization or operator exercises authority over the Project, or otherwise by operation of law to disclose any Confidential Information of another Party (“**Disclosing Party**”) or (ii) determines that it is necessary to disclose any Confidential Information in connection with Proceedings before any Governmental Body with jurisdiction over the Project, an Owner’s ownership interest in the Project, or an Owner’s rates or operations, then to the extent legally permissible, the Owner or Responsible Entity, as applicable, will give prompt prior notice of such impending disclosure to the Disclosing Party so that the Disclosing Party at its own cost may seek a protective Order or other appropriate remedy. The Owner or Responsible Entity (a) will disclose only that portion of the Confidential Information that it is legally required to disclose or determines that is necessary to disclose in connection with Proceedings before any Governmental Body with jurisdiction over

the Project, an Owner's ownership interest in the Project, or an Owner's rates or operations, (b) will give prompt notice of same to the Disclosing Party and (c) will reasonably cooperate with the Disclosing Party in connection with the efforts of the Disclosing Party seeking a protective Order or other appropriate remedy. If the Disclosing Party fails to obtain a protective Order or other appropriate remedy with respect to the extent of the planned disclosure of Confidential Information by the Owner or Responsible Entity required or deeming it necessary to disclose, such Owner may rely on advice of its legal counsel (which may be its in-house counsel) with respect to its obligations of disclosure or the necessity of its disclosure as contemplated herein.

- 12.4 Compliance with FERC Standards of Conduct.** Each Party will not, directly or indirectly, reveal any non-public transmission function information (as defined in **18 C.F.R. §§ 358.3(j)**), as such rules may be interpreted, amended or replaced by FERC from time to time, and hereinafter referred to as "**Transmission Information**") in a manner that violates **18 C.F.R. §§ 358.6 and 358.7**, as such rules may be interpreted, amended or replaced by FERC from time to time (the "**FERC Standards of Conduct**"). To the extent applicable, a disclosure (inadvertent or otherwise) of Transmission Information by a Party must be appropriately addressed by such Party pursuant to **18 C.F.R. § 358.7** or any successor provision.
- 12.5 Critical Energy Infrastructure Information.** Each Party certifies for itself and its Representatives who may be granted access to "critical energy infrastructure information" ("**CEII**") as defined in **18 C.F.R. § 388.113(c)(1)** or any successor provision that (i) it and each of its Representatives are aware of the requirements of **18 C.F.R. Part 388** with regard to CEII and (ii) it has no reason to believe that it or its Representatives would be restricted from access to CEII. To the extent applicable, a disclosure (inadvertent or otherwise) of CEII by an Owner must be appropriately addressed by such Party pursuant to **18 C.F.R. § 358.7** or any successor provision.
- 12.6 Property of Parties.** Except Confidential Information developed by a Party in connection with the Project, the costs of which were included as Project Costs for which such Party was reimbursed in accordance with this Agreement, all Confidential Information will remain the Property of the Party providing it. Notwithstanding any provision in this **Article 12** to the contrary, if such Party is an Owner and such Owner's Ownership Percentage is at any time reduced to zero, such Owner will have no right to demand that such Confidential Information be returned to such Owner or be destroyed.
- 12.7 No Accuracy Warranty.** The Party that discloses Confidential Information is not providing any warranties or representations as to the accuracy of any such Confidential Information. Nothing herein is intended to, or will, obligate a Party to provide any Confidential Information to any other Owner; **provided, however**, the foregoing will not abrogate or otherwise absolve a disclosing Party from the covenant set forth in **Section 12.1** above regarding non-infringement and prohibitions on use.
- 12.8 Breach of Confidentiality Provisions.** Each Party expressly agrees that a breach of any of the terms or conditions of this **Article 12** would result in irreparable harm and that money would not be a sufficient remedy for any such breach. Accordingly, in the event of a breach or threatened breach by a Party or by any of its Representatives of any of the provisions of this **Article 12** (and in addition to any other remedy provided by law or in equity), each Party agrees that the Party which such breach would harm will be entitled to seek appropriate equitable relief, including injunctive relief and specific performance.

- 12.9 Public Disclosure.** If a Party intends to make, directly or indirectly, any material public comment, statement, or communication (such as a press release) with respect to the Project or Project Component, or otherwise to disclose or to permit the disclosure of a material non-public aspect of the Project or any Project Component, or any of the material terms, conditions, or other material aspects of this Agreement, it will use reasonable commercial efforts to first provide to the other Parties, or their Owner Representatives, the content of the proposed disclosure, and the time and place that the disclosure will be made and provide to the other Parties, or their Owner Representatives, a reasonable opportunity to comment on the proposed disclosure; provided, however, that no such public comment, statement or communication will include any Confidential Information, except as required by Applicable Law.
- 12.10 Public Disclosure Laws.** The Parties intend that nothing in this Agreement and no action taken pursuant to this Agreement will (i) cause Confidential Information that would otherwise have been exempt from public access or inspection to become subject to public access or inspection under any Applicable Law regarding public access to information or (ii) make unavailable or waive any exception to or protection under public disclosure Applicable Laws that would otherwise enable the Parties to preserve the confidentiality of the Confidential Information.

ARTICLE 13 TERM AND TERMINATION

- 13.1 Term of Agreement.** This Agreement will become effective and be in full force and effect as of the Effective Date. If not earlier terminated pursuant to this Article 13, this Agreement will continue in full force and effect for a term that extends for five (5) years following the date of the Project Component In-Service Date for the initial Project Component subject to this Agreement and shall thereafter continue for successive two-year renewal terms (the “Term”).
- 13.2 Termination.**
- 13.2.1 Rights of Termination.** Prior to the expiration of the Term, this Agreement may be terminated (in its entirety or with respect to any Project Component) only as follows:
- 13.2.1.1 Voluntary Termination.** This Agreement may be terminated at any time with respect to a particular Project Component (or all Project Components) for any reason or no reason upon the written direction of the Management Committee to terminate this Agreement with respect to each applicable Project Component countersigned by each Responsible Entity, as applicable.
- 13.2.1.2 Termination by WMPA for Cause.** Subject to a Responsible Entity’s opportunity to cure (if applicable) as provided in Section 13.2.1.23, WMPA may terminate the appointment of a Responsible Entity for one or more of the following reasons (“Cause”) upon not less than three (3) Business Days’ prior written notice to such Party, if such Party has:
- (i) failed to follow any material policy or directive of the Management Committee of which such Party had knowledge or of which such Person should have had knowledge;
 - (ii) materially failed to perform the Services in accordance with the terms of this Agreement;
 - (iii) experienced an Insolvency Event; or

(iv) defaulted under the Project Ownership Agreement.

13.2.1.3 Opportunity to Cure. Notwithstanding anything in this Agreement to the contrary, the events described in **clauses (i), (ii) and (iii) of Section 13.2.1.2** will not constitute Cause unless and until such Responsible Entity has failed to cure such default within thirty (30) days after delivery of notice from WMMPA asserting one or more such events have occurred, or, in the case of a curable default which cannot be cured within thirty (30) days, has failed to: (i) initiate, within such thirty (30) days, actions reasonably likely to cure such default and (ii) diligently pursue such cure to completion within ninety (90) days after notice to such Responsible Entity, as applicable, concerning such default.

13.2.1.4 Termination by Responsible Entity. A Responsible Entity may cease to be a Party to this Agreement and terminate responsibility to perform obligations under this Agreement (except to the extent an obligation has been incurred or is of a nature that survives under this Agreement) for Good Reason upon not less than thirty (30) days' written notice to the Management Committee. **"Good Reason"** means:

- (i) failure of WMMPA to make any payment to such Responsible Entity as required hereunder and WMMPA's failure to cure such default within fifteen (15) days after the date of receipt of a notice by such applicable Responsible Entity to WMMPA; or
- (ii) failure or refusal of WMMPA, the Management Committee or the E&O Committee (unless the failure or refusal of the Management Committee or E&O Committee is caused by the material action or inaction of OTP's representative on such committee), as applicable, to perform any obligation under this Agreement, which failure or refusal results in a material adverse effect on such Responsible Entity, as applicable; **provided, however**, such failure or refusal will not constitute Good Reason unless and until such Owner, the Management Committee or the E&O Committee, as applicable, has failed to cure such default within thirty (30) days after delivery of a notice from such Responsible Entity, or, in the case of a curable default that cannot be cured within thirty (30) days, has failed to: (i) initiate, within such thirty (30) days, actions reasonably likely to cure such default and (ii) diligently pursue such cure to completion within ninety (90) days after such notice concerning such default.

13.2.2 Effect of Termination of a Responsible Entity. Upon the termination of OTP as a Responsible Entity (whether in the capacity as the Maintenance Provider or Control Center Authority) pursuant to **Section 13.2**, the Owners and the Responsible Entities shall begin winding up all activities under this Agreement pursuant to **Section 13.2.3.3**. The period starting on the effective date of the termination of OTP as a Responsible Entity and ending on the four-year anniversary thereof shall be the **"Termination Period"**.

- 13.2.3.1 Duties Upon Termination. During the Termination Period, subject to the contrary provisions of an Order of a Governmental Body or arbitrator, the Responsible Entities shall:
- (i) promptly and cooperatively assist in the process of winding up all Services, including the transfer as the Management Committee may direct of all (a) uncommitted funds provided by the Owners, if any, in its possession; (b) documents possessed or under the control of such Person, including records, contracts, reports, studies, business plans, forecasts and budgets and other financial accounting records related to the Project; (c) Property of the Owners; and (d) other confidential, proprietary or other records related to the Project or the Owners that are in the possession of such Responsible Entity, as directed by the Management Committee; and
 - (ii) promptly complete its other responsibilities hereunder, including the timely compilation and transmittal of reports and timely submittal of Invoices to each Owner.
- 13.2.3.2 Property Rights. Upon expiration of the Term or the earlier termination of a Responsible Entity under this Agreement, such Responsible Entity shall provide to each Owner a copy of all technical studies, reports, contracts, drawings, specifications and other similar data and other similar information that is in the possession or under the control of such Person relating to its obligations under this Agreement. All such information and instruments constitute the Property of the Owners.
- 13.2.3.3 Wind-Up and Cooperation Following Termination. Upon termination of this Agreement (either in its entirety or with respect to a particular Project Component), the Owners shall promptly and cooperatively assist each Responsible Entity, at the request of each such Responsible Entity, with the process of winding-up the Services, as applicable, including notification of appropriate Governmental Bodies, payment of all remaining outstanding obligations and liabilities associated with the Services or otherwise arising under this Agreement or the activities arising hereunder. The Owners and each Responsible Entity shall use commercially reasonable efforts to cooperate and complete the wind-up process with respect to the Project Components that are the subject of termination as expeditiously as possible and in all cases within the Termination Period.
- 13.2.3.4 Third Party Costs and Expenses of Wind-Up. The E&O Committee shall advise the Maintenance Provider of the actions to be taken, if any, with respect to Maintenance Subcontracts in connection with any termination of this Agreement or any Project Component hereunder. Costs and expenses incurred in connection therewith will constitute Maintenance Costs.
- 13.2.3.5 Termination Payment for Maintenance Provider. Upon a termination of the Maintenance Provider pursuant to this **ARTICLE 13**, the Maintenance Provider will be entitled, in addition to all other amounts due hereunder (including under **Section 6.1**) as of the date of termination and regardless of the reason for termination, to payment, from each Owner severally up to its

Ownership Percentage with respect to the applicable Project Component(s), of all costs and expenses reasonably incurred by the Maintenance Provider as a direct result of such termination for: (i) all relocation and severance costs incurred with respect to the Maintenance Provider's employees that the Maintenance Provider is contractually or legally obligated to pay such employees or that are incurred with the prior written consent of the Owners in accordance with established personnel policies of the Maintenance Provider and (ii) the costs reasonably incurred by the Maintenance Provider to demobilize its operations with respect to the Maintenance Services, as applicable; **provided, however,** such costs will be billed in accordance with **Appendix C** and **Appendix F** as applicable.

- 13.2.3.6 **Termination Payment for Control Center Authority.** Upon a termination of the Control Center Authority, to the extent such Control Center Authority is then providing Control Center Services for which it is being compensated by the Owners under this Agreement pursuant to **Section 4.2** and not pursuant to Applicable Energy Regulations, such Control Center Authority will be entitled, in addition to all other amounts due hereunder (including under **Section 6.1**) as of the date of termination and regardless of the reason for termination, to payment, from each Owner severally up to its Ownership Percentage with respect to the applicable Project Component(s), of all costs and expenses reasonably incurred by such Control Center Authority in respect of the Control Center Services described above, as a direct result of such termination for: (i) all relocation and severance costs incurred with respect to such Control Center Authority's employees that such Control Center Authority is contractually or legally obligated to pay such employees or that are incurred with the prior written consent of the Owners in accordance with established personnel policies of such Control Center Authority and (ii) the costs reasonably incurred by such Control Center Authority to demobilize its operations with respect to the Control Center Services, as applicable; **provided, however,** such costs will be billed in accordance with **Appendix C** and **Appendix F** as applicable.

ARTICLE 14 LIMITATIONS OF LIABILITY

- 14.1 **Limitation on Consequential Damages.** No Party will be liable to any other Party under this Agreement for any special, incidental, consequential, indirect, exemplary, treble or punitive Damages or any other penalty (including loss of revenue, loss of profits, diminution in value, cost of capital, loss of goodwill or increased operating costs); **provided, however,** the foregoing exclusion will not apply to liability to indemnify for Damages arising from any Third Party Claim or Third Party Environmental Claim pursuant to **Section 11.1**.
- 14.2 **Responsible Entity Limits of Liability.**
- 14.2.1 **Cap Upon Damages to Owners.**
- 14.2.1.1 **Maintenance Provider.** For each Year, the Maintenance Provider's total aggregate liability to the Owners for any and all Damages of any kind arising out of or relating to this Agreement with respect to the Project shall be [REDACTED], except Damages caused by or arising from the Maintenance Provider's (i) fraud; (ii) intentional

misconduct or willful misconduct; or (iii) defense, indemnification and hold harmless obligations under **Section 11.1.2**.

14.2.1.2 **Control Center Authority**. The applicable Control Center Authority's total aggregate liability to the Owners for any and all Damages of any kind arising out of or relating to this Agreement will not exceed the maximum limit of liability established in **Section 10.3** of the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midcontinent Independent Transmission System Operator, Inc. (the "**Tariff**"), without regard to whether or not the Control Center Services being performed are subject to the Tariff.

14.2.1.3 **Project Insurance**. Proceeds of Project Insurance will not be used to offset or reduce the aggregate limit of liability of the applicable Responsible Entity under this **Section 14.2.1** (it being the intention of the Parties, however, that the foregoing shall not result in any reduction of the amount payable by any insurer). Notwithstanding the foregoing, any liability of the applicable Responsible Entity covered by Project Insurance will be paid first from the proceeds thereof and then, solely to the extent insurance proceeds cannot be recovered, from the applicable Responsible Entity.

14.2.2 **Liability Exclusions**. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE MAINTENANCE PROVIDER SHALL HAVE NO LIABILITY TO THE OWNERS FOR DAMAGES SUFFERED OR INCURRED BY THE OWNERS TO THE EXTENT RESULTING FROM:

- (i) the Maintenance Provider's reliance upon, or compliance with, any agreement, waiver, consent, approval, instruction, direction or communication given to the Maintenance Provider by the Management Committee, the E&O Committee or all of the Owners, in writing, except to the extent caused by the negligence (but only to the extent of Project Insurance), gross negligence, intentional misconduct or willful misconduct of the Maintenance Provider;
- (ii) the Maintenance Provider's compliance with any written instruction, direction or parameter given by the Construction Manager prior to the turnover of responsibility for a Project Component to the Maintenance Provider, except (i) if the Construction Manager and the Maintenance Provider are the same Person and (ii) to the extent caused by the negligence (but only to the extent of Project Insurance), gross negligence, intentional misconduct or willful misconduct of the Maintenance Provider;
- (iii) failure of any Party (other than the Maintenance Provider) to comply with the provisions of any Project Agreement, except if such failing Party and the Maintenance Provider are the same Person;
- (iv) the absence, lapse or voidance of any required approval of a Governmental Body or any warranty, other than any such absence, lapse or voidance resulting from the Maintenance Provider's negligence (but only to the extent of insurance coverage therefor pursuant to **Appendix D**), gross negligence, willful misconduct or intentional misconduct;

- (v) a design or construction defect in any Project Component, or the violation or infringement of the intellectual property rights of any Person by performance of the Maintenance Services with respect to any Project Component or any component, equipment or process thereof, as designed, engineered and constructed (excluding software, processes or materials selected solely by the Maintenance Provider and utilized solely by the Maintenance Provider in performing the Maintenance Services); or
- (vi) any event or condition that existed with respect to a Project Component or Project Real Property prior to each Project Component In-Service Date, including any conditions involving Hazardous Substances.

14.2.3 **Limited Recourse.** The obligations of a Party to this Agreement are obligations of that Party only and no recourse will be available against any director, officer, shareholder, member, partner, employee, or agent of that Party or of its Affiliates in connection therewith.

ARTICLE 15 MISCELLANEOUS PROVISIONS

- 15.1 **Survival.** Schedule 1, Sections 2.4, 3.8, 3.11, 3.12, 5.4, 5.8, 5.9, 6.2, 6.7, 6.8, 6.9, 7.10, 7.11, 8.6, and 8.9, Articles 11, 12, 13, 14, and 15, and Appendices B and D, , and all other sections providing for indemnification or limitation or protection against liability of any Party will survive the termination, cancellation or expiration of this Agreement as to any Party or in its entirety.
- 15.2 **Forward Contracts; Single Agreement.** The Owners and the Responsible Entities acknowledge and agree that this Agreement and the other Project Agreements are “forward contracts” and that the Owners and the Responsible Entities are “forward contract merchants,” as those terms are defined in the United States Bankruptcy Code. The Owners and the Responsible Entities further acknowledge and agree that this Agreement and the other Project Agreements form a single, integrated agreement and this Agreement and the other Project Agreements are entered into in reliance on the fact that this Agreement and the other Project Agreements collectively form a single agreement between the Owners.
- 15.3 **Delinquent Payments.** Payments not made when due under this Agreement will bear interest from the due date thereof until the date paid at a floating rate equivalent to SOFR.
- 15.4 **Notification List.** The E&O Committee shall assemble and distribute a list of the key personnel (and contact information) of each Party (in each capacity hereunder) to this Agreement that may need to be contacted in connection with the performance of services or obligations under this Agreement. Each Party shall provide such information to the E&O Committee and use its best efforts to keep such information current.
- 15.5 **Force Majeure.** No Party (in any capacity) will be liable hereunder to the extent that its performance of an obligation hereunder is delayed or prevented by an event of Force Majeure. Such Party shall use its commercially reasonable efforts to overcome the limitations imposed by the occurrence of such event of Force Majeure and to mitigate the consequences of its inability to perform on the other Parties.

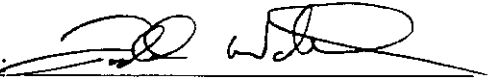
[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the date above recited.

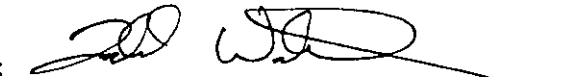
OWNER:

OTTER TAIL POWER COMPANY

BY: 
NAME: Todd Wahlund
ITS: President

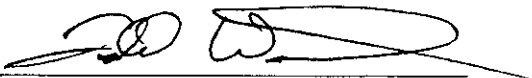
MAINTENANCE PROVIDER:

OTTER TAIL POWER COMPANY

BY: 
NAME: Todd Wahlund
ITS: President

CONTROL CENTER AUTHORITY:

OTTER TAIL POWER COMPANY

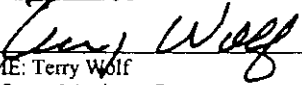
BY: 
NAME: Todd Wahlund
ITS: President

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IN WITNESS WHEREOF, the Owners have caused this Agreement to be executed as of the date above recited.

OWNER:

**WESTERN MINNESOTA MUNICIPAL
POWER AGENCY**

BY: 
NAME: Terry Wolf
ITS: Second Assistant Secretary

SCHEDULE 1

GENERALLY APPLICABLE PROVISIONS

ARTICLE 1 DEFINITIONS

The capitalized terms used in this **Schedule 1** or in notices given under any Project Agreement have the meanings specified in this Schedule 1. All other capitalized terms used but not defined in this **Schedule 1** have the meanings specified in the Project Ownership Agreement, and if not specified therein, then in the Construction Management Agreement, and if not specified therein, then in the Operation and Maintenance Agreement.

ARTICLE 2 DISPUTE RESOLUTION

- 2.1 Scope of Dispute Resolution Provisions.** Except for Percentage Calculation Disputes contemplated by the **Project Ownership Agreement**, or any dispute, claim or controversy arising under **Section 6.4** (to the extent relating to COSA Operating Expenses) or **Articles 14** or **15** of the **Project Ownership Agreement**, the provisions of this **Article 2** will govern any dispute, claim or controversy arising out of, or relating to, a Project Agreement or relating to a decision of the Management Committee (a “**Dispute**”) between or among (i) the Owners under any Project Agreement; (ii) an Owner acting singly, or the Owners acting collectively through the Management Committee, and the Construction Manager under a Construction Management Agreement; or (iii) an Owner acting singly, or the Owners acting collectively through the Management Committee, and the Maintenance Provider or Control Center Authority under an Operation and Maintenance Agreement; **provided, however,** that an Owner in any capacity (including as an Owner, a Construction Manager, a Maintenance Provider or a Control Center Authority) may, at any time seek appropriate equitable relief, including injunctive relief and specific performance, without first complying with the provisions of this **Article 2**.
- 2.2 Required Steps Before Initiating Other Remedies.** No Owner in any capacity (including as an Owner, a Construction Manager, a Maintenance Provider or a Control Center Authority) may seek any remedy in connection with a Dispute subject to **Article 2** without first complying with the provisions of this **Section 2.2**. Each Owner shall appoint a Senior Executive of such Owner authorized to settle any applicable dispute hereunder.
- 2.2.1 Notice of Dispute.** Any Owner in any capacity wishing to assert a claim or pursue any other remedy in connection with a Dispute (the “**Initiating Party**”) will provide written notice (a “**Dispute Notice**”), which must: (i) be dispatched at the same time and in the same manner to all other Parties; (ii) describe in reasonable detail the nature of the Dispute; (iii) identify all Parties that are required for the resolution of the Dispute (the “**Responding Parties**”); (iv) specify the resolution sought by the Initiating Party; (v) provide the name, title and contact information of the Senior Executive appointed by the Initiating Party; and (vi) indicate the

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proposed place, date and time (within the limits set forth in **Section 2.2.3**) for Senior Executives of the Initiating Party and Responding Parties (together, the “**Disputing Parties**”) to conduct an initial meeting to discuss and attempt to resolve the Dispute.

- 2.2.2 Appointment of Senior Executives.** Within three (3) Business Days after receipt of a Dispute Notice, each Responding Party will appoint and provide written notice to the other Disputing Parties of a Senior Executive assigned to participate in efforts to settle the Dispute.
- 2.2.3 Initial Meeting of Senior Executives.** Within five (5) Business Days after receipt of a Dispute Notice, the Senior Executives will meet in the place specified in the Dispute Notice (such location to be either in Big Stone City, South Dakota or a virtual meeting, with either Owner having the discretion to demand a virtual meeting), at the date and time specified in the Dispute Notice, unless all Disputing Parties agree to modify one or more of the place, date and time for the initial meeting. The purpose of the initial meeting will be for the Senior Executives to attempt in good faith to reach a mutually acceptable resolution of the Dispute.
- 2.2.4 Additional Meeting of Senior Executives.** If the Disputing Parties are unable to resolve the Dispute at the initial meeting of Senior Executives held in accordance with **Section 2.2.3**, the Senior Executives will hold at least one (1) additional meeting, which all Senior Executives must attend in person during the ten (10) Business Days following the initial meeting, to continue to attempt in good faith to reach a mutually acceptable resolution of the Dispute unless the Disputing Parties agree otherwise. The Senior Executives may by mutual agreement use a mediator to facilitate an acceptable resolution at the additional meeting and to schedule subsequent additional meetings. If the Disputing Parties have not resolved the Dispute by the end of the additional meeting held in accordance with this **Section 2.2.4** (or any subsequent additional meetings scheduled by mutual agreement) then if all Disputing Parties agree to attempt to resolve the Dispute through mediation, the Disputing Parties will proceed to mediation in accordance with **Section 2.3**. If there is no agreement to resolve the Dispute through mediation, all Disputing Parties will retain all rights and remedies available at law or in equity.
- 2.2.5 Deemed Satisfaction of Obligations Under Section 2.2.** If a Party has made good faith efforts to comply with the requirements set forth in **Sections 2.2.1** through **2.2.4** (the “**Complying Party**”), but has been unable to do so because of another Party’s failure or refusal to comply for a period of not less than fifteen (15) Business Days following delivery of a Dispute Notice, the obligations set forth in **Section 2.2** will be deemed satisfied for purposes of the Complying Party’s right to pursue other remedies.
- 2.2.6 Tolling of Statute of Limitations.** If an Initiating Party provides the Dispute Notice prior to the expiration of the statute of limitations applicable to the Dispute that is the subject of the Dispute Notice and otherwise complies with the

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requirements set forth in Sections 2.2.1 through 2.2.4, then the statute of limitations for such Dispute will be tolled by the number of days that have lapsed between the date of the Dispute Notice and (i) the last additional meeting of Senior Executives held in accordance with Section 2.2.4 if the Senior Executives hold one or more additional meetings, (ii) the tenth (10th) Business Day following the initial meeting of Senior Executives held in accordance with Section 2.2.3 if the Senior Executives do not hold an additional meeting or (iii) the fifteenth Business Day following the Dispute Notice if the Senior Executives do not hold the initial meeting of Senior Executives in accordance with Section 2.2.3 on or prior to such date.

2.3 Non-Binding Mediation. Before resorting to litigation for any disputes arising out of any Project Agreement, the Parties may first attempt to resolve the dispute through mediation. If the Parties agree to mediation, the Parties agree to cooperate to the end that any mediation proceeding agreed to by the Parties shall be conducted as expeditiously as possible and a mediator shall be selected by mutual agreement between the Parties and shall, to the extent practicable, be a Person familiar with the public electric utility industry generally. The Parties agree to select the mediator within twenty (20) days of an agreement to mediate. The mediation materials shall be submitted to the mediator within thirty (30) days after selection of the mediator, and the mediation occur within thirty (30) days after the submittal.

2.4 Availability of Other Remedies. Nothing herein, including exercise of any right to mediate hereunder, shall limit the right of any Party hereto to obtain provisional or ancillary remedies such as injunctive relief, attachment or appointment of a receiver from a court having competent jurisdiction, before, during or after the pendency of any mediation or negotiation pursuant to this Article 2.

2.5 Confidentiality of Proceedings. If and to the extent permitted by Applicable Law, all documents prepared or obtained during discovery or produced during a hearing or meeting (other than documents which are already part of the public domain) and all testimony or recordings of testimony, including depositions, affidavits, and expert reports exchanged by the Parties or produced during a hearing or meeting, shall be confidential.

2.6 Continued Duties. The Parties shall carry on their duties under the Agreement during any Proceedings, unless otherwise ordered by a court.

ARTICLE 3
WAIVER OF GOVERNMENTAL IMMUNITY

To the extent permitted under applicable law, WMMPA hereby explicitly and irrevocably waives any immunity it may have as municipal corporation and/or political subdivision of a particular state, or otherwise created by or governed under the laws of the States of Minnesota or South Dakota, including but not limited to the municipal immunities and liability limits provided in the Minnesota Municipal Tort Claims Act and any other applicable state or federal law. Further, WMMPA hereby waives any and all claims and defenses available under any special statutory protections applicable to a municipal corporation.

ARTICLE 4
NOTICES

- 4.1 Notices Generally.** All notices, requests or other communications required under a Project Agreement shall be in writing and shall be sufficient in all respects: (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other Persons for delivery at the address identified (as confirmed by, if delivered by courier, the records of such courier), (ii) if sent by email, when the sender receives confirmation of receipt by the receiving Person, (iii) if mailed, upon the date of delivery as shown by the return receipt therefor, or (iv) if delivered by a nationally recognized overnight mail delivery service, upon the date of delivery. Notices must be sent to the addresses of the Persons set forth on Exhibit 1 attached to this Schedule 1.
- 4.2 Designation of Different Addresses and Persons.** A party may, at any time, by written notice to each other party, designate different or additional Persons or different addresses for giving of notices, demands or requests to it under a Project Agreement.

ARTICLE 5
MISCELLANEOUS PROVISIONS

- 5.1 Headings.** The headings of the articles, sections and subsections of each Project Agreement are intended for the convenience of the Parties only and will in no way be held to explain, modify, construe, limit, amplify or aid in the interpretation of the provisions hereof. The terms "hereof," "herein," "hereunder," "hereto," "hereby" and similar expressions refer to, as applicable, each Project Agreement as a whole and not to any particular article, section, subsection or other portion thereof and include the appendices, schedules and exhibits thereto and any document, instrument or agreement executed and/or delivered pursuant thereto unless expressly so limited, and the terms "this Section" or "this Article" refer to the section or article in which such words occur.
- 5.2 Scope of Agreement.** Unless the context otherwise requires, all references in a Project Agreement or in any appendix, schedule, exhibit or instrument thereto, to the assets, Property interests, operations, business, financial statements, employees, books and records, accounts receivable, accounts payable, contracts or other attributes thereunder will mean such items or attributes as they are used in, apply to, or relate to such Project Agreement.
- 5.3 Interpretation.** The Parties have participated jointly in the negotiation and drafting of each Project Agreement. If an ambiguity or question of intent or interpretation arises, each Project Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of such Project Agreement. The terms and phrases used in each Project Agreement, unless the context otherwise requires, are to be interpreted as follows: (i) the words "including," "include" or "includes" mean including

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without limitation; (ii) reference to any agreement (including a Project Agreement), appendix, schedule, exhibit, instrument or coverage policy means as such is amended, modified or supplemented, including by waiver or consent; (iii) reference to any Applicable Law or Applicable Energy Regulation means such Applicable Law or Applicable Energy Regulation as amended, modified, codified or reenacted, in whole or part, and in effect from time to time; (iv) reference to any Owner includes such Owner's successors and assigns, to the extent that such successors and assigns are permitted by the applicable Project Agreement; (v) pronouns in masculine, feminine and neuter genders are to be construed to state and include any other gender; (vi) the words "will" and "shall" have the same meaning; and (vii) unless the context otherwise requires, all defined terms in this **Schedule 1** or in any Project Agreement include the singular and the plural.

- 5.4 Relationship of Owners; New Owners.** The covenants, obligations and liabilities of the Parties to each Project Agreement are several, and not joint or collective, and nothing contained in any Project Agreement will ever be construed to create an association, joint venture, trust, partnership or other legal relationship, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Parties to a Project Agreement. The Owners agree that every Person that desires to acquire an interest in the Project will do so in accordance with the terms of the Project Ownership Agreement and will become a signatory to all of the Project Agreements by executing the applicable Transfer Agreement. Each Owner, the Construction Manager, each Maintenance Provider and each Control Center Authority will be individually responsible for its own covenants, obligations and liabilities in each Project Agreement to which it is a Party. No Owner will be under the control of, or will be deemed to control, the other Owner or the Owners as a group. No Owner acting in any capacity is the agent of, or has a right or power to bind, the other Owner without its express written consent, except to the extent agency authority has been granted to an Owner by the other Owner pursuant to the terms of a Project Agreement.
- 5.5 No Rights or Benefits to Third Parties.** Except as otherwise specifically provided in a Project Agreement, the Parties do not intend to create rights in, or to grant remedies to, any Third Party as a beneficiary of any Project Agreement or to create any duty to, or standard of care on behalf of, any Third Party by any covenant, obligation or undertaking established in any Project Agreement. There are no incidental Third Party beneficiaries to any Project Agreement and, by way of clarification and not of limitation, no Governmental Body, customer or member of an Owner or customer of an Owner's member is an intended or incidental Third Party beneficiary thereof.
- 5.6 Binding Obligations.** Each Project Agreement is binding upon and inures to the benefit of the permitted successors and assigns, if any, of the Parties.
- 5.7 Severability.** If any term, covenant or condition of a Project Agreement or the application of such term, covenant or condition is held invalid or unenforceable as to any Person or circumstance by any Governmental Body, all other terms, covenants or conditions of such Project Agreement and their application will not be affected thereby, but will remain in force and effect unless such a Governmental Body holds that the

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provisions are not separable from all other provisions of such Project Agreement. The Parties to a Project Agreement specifically consent to the “blue-penciling” of such Project Agreement by any Governmental Body to construe as valid and enforceable the terms and conditions of such Project Agreement, consistent with the intent of the Parties thereto. Such Governmental Body will have the authority to reform and interpret the terms and conditions of a Project Agreement to find a valid and enforceable construction of such Project Agreement that is consistent with the intent of the Parties thereto and hold all invalid and unenforceable provisions, if any, as separable from all other remaining provisions.

- 5.8 Amendment and Waiver.** No purported amendment of a Project Agreement will be effective unless in a writing specifically referring to such Project Agreement, which is executed and delivered by all of the parties to such Project Agreement. The terms, conditions, warranties, representations and covenants contained in a Project Agreement, including the documents, instruments and agreements executed and delivered by any of the Parties thereto pursuant to such Project Agreement, may be waived only by a written instrument executed by the Party against whom such waiver is sought to be enforced. Any such waiver will only be effective in the specific instance and for the specific purpose for which it was given and will not be deemed a waiver of any other provision thereof or of the same breach or default upon any recurrence thereof. No failure on the part of any Party to a Project Agreement, as applicable in the circumstances, to exercise, and no delay in exercising, any right thereunder will operate as a waiver thereof nor will any single or partial exercise of any right thereunder preclude any other or further exercise thereof or the exercise of any other right.
- 5.9 Execution in Counterparts and Delivery of Electronic Signatures.** Each Project Agreement may be executed in any number of counterparts. All such counterparts will be deemed to be originals and will together constitute but one and the same instrument. Each Project Agreement will become effective upon its execution by the applicable Parties thereto. The executed counterparts of a Project Agreement and any ancillary documents thereto, such as amendments, may be delivered by electronic means, such as email and/or DocuSign, and the receiving Party may rely on the receipt of such executed counterpart as if the original had been received.
- 5.10 Governing Law; Venue; Waiver of Jury Trial.** Each Project Agreement will be governed by and construed in accordance with the laws of the State of Minnesota (exclusive of conflicts of law provisions of any jurisdiction and the principles of comity), except for those Applicable Laws relating to Project Real Property which govern within the state of location of such Property. Except as otherwise set forth in a Project Agreement, the Parties to each Project Agreement agree and consent that any Proceeding seeking to enforce any provision of such Project Agreement will be instituted and adjudicated solely and exclusively in the state courts sitting in Douglas County, Minnesota or the federal courts sitting in Fergus Falls, Minnesota. Each Party to a Project Agreement agrees that each such court will have personal jurisdiction over it with respect to such Proceeding, and waives any objections it may have, and expressly consents, to such personal jurisdiction. EACH PARTY TO A PROJECT AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT

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MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY PROJECT AGREEMENT.

- 5.11 Assignment.** No Party to a Project Agreement may Transfer its interest in such Project Agreement, except an Owner may assign its interest as an Owner (but not in any other capacity) in a Project Agreement as part of and to the extent is Ownership Percentage in the Project is transferred as provided in the Project Ownership Agreement.
- 5.12 Payment in Business Days.** Notwithstanding anything to the contrary in any Project Agreement, if any payment required to be made under a Project Agreement falls due on a day that is not a Business Day, such payment will be due on the next succeeding Business Day.
- 5.13 Further Assurances.** Each Party to a Project Agreement will use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate and make effective the transactions contemplated by each Project Agreement to which it is a Party in a manner consistent with Applicable Law.
- 5.14 Cooperation.** Each Owner will make good faith efforts to cooperate with the other Owner to comply with the terms and conditions of the Project Agreements and other agreements between the Owners relating to the Project, and all critical permits, contracts and agreements entered into in connection with the Project, and other obligations and commitments arising in connection with the Project.
- 5.15 Currency.** All payments under all Project Agreements will be made in such currency as is legal tender for the payment of debts in the United States.
- 5.16 Entire Agreement.** Each Project Agreement, together with all other Project Agreements, constitutes the entire agreement between or among, as applicable, the respective Parties thereto, with respect to the subject matter thereof, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealings between or among, as applicable, the Parties thereto, on the subject matter thereof. Each Owner acknowledges and agrees that it would not have entered into any individual Project Agreement in its capacity as an Owner without the execution and delivery of all of the other Project Agreements to which it is a Party in its capacity as an Owner.

EXHIBIT 1

NOTICES

TO OWNERS OR DISCRETELY OWNED SUBSTATION ASSET OWNERS:

IF TO OTTER TAIL POWER COMPANY:

OTTER TAIL POWER COMPANY
215 S. CASCADE ST.
P.O. BOX 496
FERGUS FALLS, MN 56538-0496
ATTENTION: VICE PRESIDENT OF TRANSMISSION
TELEPHONE: 218-739-8594

WITH A MANDATORY COPY TO:

OTTER TAIL POWER COMPANY
215 S. CASCADE ST.
P.O. BOX 496
FERGUS FALLS, MN 56538-0496
ATTENTION: GENERAL COUNSEL
TELEPHONE: 218-739-8350

IF TO WESTERN MINNESOTA MUNICIPAL POWER AGENCY:

WESTERN MINNESOTA MUNICIPAL POWER AGENCY
c/o MISSOURI RIVER ENERGY SERVICES
3724 WEST AVERA DRIVE
P.O. BOX 88920
SIOUX FALLS, SD 57109-8920
ATTENTION: CHIEF OPERATING OFFICER
TELEPHONE: 605-338-4042

WITH MANDATORY COPIES TO:

WESTERN MINNESOTA MUNICIPAL POWER AGENCY
c/o MISSOURI RIVER ENERGY SERVICES
3724 WEST AVERA DRIVE
P.O. BOX 88920
SIOUX FALLS, SD 57109-8920
ATTENTION: MRES GENERAL COUNSEL
TELEPHONE: 605-338-4042

WESTERN MINNESOTA MUNICIPAL POWER AGENCY
129 2ND STREET NW
ORTONVILLE, MN 56278
ATTENTION: WMMPA GENERAL COUNSEL
TELEPHONE: 320-839-2549

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TO THE CONSTRUCTION MANAGER:

OTTER TAIL POWER COMPANY
215 S. CASCADE ST.
P.O. BOX 496
FERGUS FALLS, MN 56538-0496
ATTENTION: VICE PRESIDENT OF TRANSMISSION
TELEPHONE: 218-739-8594

WITH A MANDATORY COPY TO:

OTTER TAIL POWER COMPANY
215 S. CASCADE ST.
P.O. BOX 496
FERGUS FALLS, MN 56538-0496
ATTENTION: GENERAL COUNSEL
TELEPHONE: 218-739-8350

TO THE AUTHORIZED OWNER REPRESENTATIVES:

IF TO OTTER TAIL POWER COMPANY:

REPRESENTATIVE: JOANN THOMPSON
EMAIL: JTHOMPSON@OTPCO.COM

ALTERNATE: KIRK PHINNEY
EMAIL: KPHINNEY@OTPCO.COM

ADDRESS:
OTTER TAIL POWER COMPANY
215 S. CASCADE ST.
P.O. BOX 496
FERGUS FALLS, MN 56538-0496

IF TO WESTERN MINNESOTA MUNICIPAL POWER AGENCY:

REPRESENTATIVE: TERRY WOLF
EMAIL: TERRY.WOLF@MRENERGY.COM

ALTERNATE: RICHARD DAHL
EMAIL: RICHARD.DAHL@MRENERGY.COM

ADDRESS:
MISSOURI RIVER ENERGY SERVICES
3724 WEST AVERA DRIVE
P.O. BOX 88920
SIOUX FALLS, SD 57109-8920

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APPENDIX A
TO
OPERATION AND MAINTENANCE AGREEMENT
DESCRIPTION OF THE PROJECT COMPONENT

Project Component Type	Project Phase (indicate yes/no)	COSA (indicate yes/no)	Description
Transmission Line	Yes	No	This Project Phase is approximately 96 miles of 345 kV transmission line from the vang on the first structure outside the fence of Otter Tail Power's Big Stone South Substation located near Big Stone City, South Dakota to the vang on the first structure from the deadend structure located inside the fence of Western Minnesota Municipal Power Agency's Alexandria Substation located near Alexandria, Minnesota. The Big Stone South to Alexandria 345 kV Transmission Line consists of bundled T2-636 kcmil ACSR conductor on double circuit capable monopole steel structures containing two sets of davit arms on concrete foundations with one optical ground wire (OPGW) and one overhead ground wire (OHGW).

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**APPENDIX D
TO OWNERSHIP AND MAINTENANCE AGREEMENT**

INSURANCE PLAN

Capitalized terms that are not defined in this Appendix or the Agreement to which it is attached have their respective meanings defined in the applicable policies of insurance. This **Appendix D** establishes the initial Insurance Plan (this “**Plan**”) under the Agreement. The full and complete description of insurance required of Contractors and Subcontractors will be as specified in this Plan and any Subcontracts entered into between the CM and such Contractors and Subcontractors.

I. CONSTRUCTION PHASE INSURANCE

A. Owner Controlled Insurance Program Definitions.

The following definitions shall apply to the owner controlled insurance program (the “**OCIP**”) defined hereunder.

1. “**Enrolled Parties**” means (a) the CM, (b) each Owner (irrespective of the capacities in which it participates in the Big Stone South to Alexandria 345 kV Transmission Line Project Component), (c) eligible Contractors and Subcontractors who perform on-site construction operations on the OCIP Site, and (d) such other persons or entities as the CM may designate as Enrolled Parties who perform on-site work at the OCIP Site.
2. “**OCIP Manual**” means the Project insurance manual, which manual is developed by the OCIP Broker and OCIP Administrator as approved in writing from time to time by the Management Committee.
3. “**OCIP Site**” means the Big Stone South to Alexandria 345 kV Transmission Line Project Component with all Project Real Property and other sites incidental and/or adjacent to any lay-down or offsite storage facilities as defined in the OCIP insurance policies which shall be further stipulated in the OCIP Manual.

B. OCIP Implementation.

1. Prior to the beginning of Construction Work, the Construction Manager (referred to herein as the “**CM**”) shall implement the OCIP at a time to be determined by the CM in consultation with the Management Committee. The OCIP will be placed by the Project’s designated insurance broker (the “**OCIP Broker**”) who will designate a Project insurance administrator (the “**OCIP Administrator**”).
2. The CM shall engage the OCIP Broker to obtain competitive quotations for insurance coverages in accordance with this Insurance Plan to be made part of the OCIP, and to place selected coverages. The CM shall use the OCIP Administrator to: (a) provide a process for and undertake enrollment of eligible Contractors and Subcontractors in insurance policies pursuant to this Insurance Plan and any applicable Subcontract, (b) assure compliance with this Insurance Plan (including both OCIP enrolled and non-enrolled insurance requirements as set forth herein), (c) review and confirm Contractor and Subcontractor insurance

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costs that should be excluded from Project billings relative to coverages provided under the OCIP, and (d) perform any other tasks summarized in the OCIP Manual.

3. The CM shall cause the OCIP Administrator to ensure that the Owners are designated First Named Insureds under each policy placed pursuant to the OCIP, and the CM and Enrolled Parties be included as Named Insureds. The Management Committee may allow the CM to make exceptions of certain classes of Contractors, Subcontractors or vendors eligible to become Enrolled Parties, and the OCIP Manual will be updated to reflect such. The CM will require that all Enrolled Parties comply with the requirements set forth in the OCIP Manual, a copy of which will be provided to each Enrolled Party by the OCIP Administrator. The OCIP Manual will detail enrollment requirements, including the submittal of forms and documentation necessary for enrollment into the OCIP. Enrollment will be evidenced by an enrollment confirmation notice and certificates of insurance issued by the OCIP Administrator to the Enrolled Party.

C. OCIP Project Specific Insurance.

Unless otherwise provided herein, the CM shall procure and all Enrolled Parties through their participation in the OCIP shall maintain the following insurance coverages set forth in this **Section I. (C) (1), (2) & (3)** (collectively, the “**OCIP Insurance Coverage**”), the cost of which (including premiums, deductibles and self-insured retentions) will constitute a CM Cost:

1. **Commercial General Liability (“CGL”) insurance** (on form ISO CG 00 01 or its equivalent) including contractual liability coverage and other coverages usual and customary to the standard CGL form, with primary limits of \$ [REDACTED] per occurrence / \$ [REDACTED] General Aggregate / \$ [REDACTED] Products & Completed Operations Aggregate. An extended Completed Operations coverage period will apply for 10 years after the In-Service Date or for the applicable Statute of Repose in the jurisdiction where the project is located (usually 10 years).

The General Aggregate Limit will reinstate at least once during the multi-year policy period, or annually if commercially available and at a reasonable cost agreed to by the Management Committee. The Completed Operations Aggregate Limit will not reinstate during the extended Completed Operations period unless a reinstatement option becomes commercially available and at a reasonable cost agreed to by Management Committee.

CGL Self-insured Retention or Deductible \$ [REDACTED] per occurrence.

2. **Umbrella or Excess Liability insurance** of not less than \$ [REDACTED] per occurrence and in the aggregate. Coverage shall follow the form of the primary CGL or if not following form, shall be at least as broad as coverage provided by the primary CGL.
3. **Contractor’s Pollution Liability (“CPL”) insurance** in the amount of \$ [REDACTED] per occurrence and in the aggregate will be procured by the CM providing coverage to Enrolled Parties on the OCIP Site.

THE OCIP SHALL ONLY PROVIDE GENERAL LIABILITY AND EXCESS LIABILITY COVERAGE TO ENROLLED PARTIES. ADDITIONALLY, THE CM WILL MAINTAIN THE ABOVE INDICATED CONTRACTORS' POLLUTION LIABILITY POLICY ON BEHALF OF THE ENROLLED PARTIES FOR POLLUTION LIABILITY EVENTS DIRECTLY ASSOCIATED WITH A PROJECT COMPONENT.

The OCIP shall NOT provide coverage for workers' compensation insurance, employer's liability insurance, automobile liability insurance, contractor's equipment insurance, performance bonds and/or other lines of insurance that Enrolled Parties or non-enrolled parties may be required to carry under this Insurance Plan or otherwise determined appropriate to adequately protect such parties from exposures to risk.

D. Other Insurance Required of CM, Owners and/or Contractors (the "Non-OCIP Insurance Requirements"):

Each of the CM, each Owner, and each Contractor performing Services pursuant to Subcontract shall obtain and maintain the following coverages.

1. **Non-Owned Aircraft Liability Insurance:** The CM will not procure non-owned aviation insurance for any Project Component; any such insurance shall be procured and maintained according to the terms of the applicable Subcontract.
2. **Professional Liability Insurance:** The CM will not procure professional liability insurance nor any errors & omissions for first party indemnity or professional liability claims by third parties for any Project Component and any such insurance shall be procured and maintained according to the terms of the applicable Subcontract.
3. **Lay-Down Yard Property Insurance:** Property insurance during Construction Work with respect to Owners' Equipment and Materials stored or utilized at the lay-down yards defined by the CM in writing after the date hereof (the "**Lay-Down Yards**") shall be procured by the CM; The Owners will be Named Insureds and Loss Payees to the extent of their interest(s) in any covered loss under any CM procured property insurance with respect to the Lay-Down Yards. Should a loss to covered property be due to the negligence of a Contractor or Subcontractor, any policy deductibles will be chargeable to the negligent Contractor or Subcontractor in an amount not less than \$ [REDACTED].
4. **COSA Property Insurance:** Property insurance during Construction Work with respect to Owners' Materials and Equipment stored, utilized, or used for Construction Work at any COSA shall be procured by the CM; The Owners will be Named Insureds and Loss Payees to the extent of their interest(s) in any covered loss under any CM procured property insurance with respect to the COSAs. Should a loss to covered property be due to the negligence of a Contractor or Subcontractor, any policy deductibles will be chargeable to the negligent Contractor or Subcontractor in an amount not less than \$ [REDACTED].
5. **Owners' Owned Substations:** Property insurance for Construction Work with respect to Owners' Equipment and Materials stored, utilized, or used for Construction Work at any Owners individually owned substation will not be procured by the CM. Owners are responsible to insure.

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6. **Self-Insured Property Insurance:** Construction Work with respect to Owners' Equipment and Materials stored, utilized, or used for Construction Work outside any Lay-Down Yard or COSA shall be self-insured. Should a loss to self-insured property be due to the negligence of a Contractor or Subcontractor, such loss will be chargeable to the negligent Contractor or Subcontractor in an amount not less than \$[REDACTED].

The CM shall cause the Contractors and Subcontractors responsible to insure Equipment and Materials designated for any Project Component that they may acquire and for which they have an insurable interest and risk of loss.

7. **Special Cargo Insurance:** If the CM determines that ocean marine transit should be utilized for the transportation of a Project Component Equipment or Materials for which risk of loss will pass to the buyer before transit occurs, Ocean Marine Cargo insurance on a "warehouse to warehouse" basis may be procured, insuring the Materials to be used in and/or incorporated into the Project Component against loss or damage arising from customary "all risk" marine perils (including war, strikes, riots, and civil commotion, if readily available) while in transit. The Marine Cargo policy shall be subject to a physical damage deductible not to exceed \$[REDACTED]. The CM and each Owner, irrespective of the capacity in which such party participates in the Project Component, will be Named Insureds and Loss Payees, to the extent of their interest(s) in any covered loss. It is up to the discretion of the CM whether such insurance shall be procured by a Contractor or Subcontractor, in each case prior to the time the risk being insured arises. If the insurance is provided by a Contractor or Subcontractor, premiums, deductibles and self-insured retentions will be a CM Cost by inclusion of such cost in the cost of goods or services being provided.

E. Individually Procured (Non-OCIP) Insurance

Subject to the Non-OCIP Insurance Requirements set forth in Section D above, the CM and each Owner, irrespective of the capacities in which it participates in Project Component, and each Contractor and Subcontractor (individually and collectively the "Project Construction Parties"), upon the A&R Effective Date, shall individually procure and maintain the additional insurance coverages as provided below:

1. **Workers' Compensation and Employers Liability Insurance:** Each of the Project Construction Parties shall procure and maintain its own Workers' Compensation policy, which policy will cover no less than the statutory liability under the workers' compensation laws of the states in which such party's work or services are performed.

The Employers Liability limits on these policies will be no less than

\$[REDACTED] each accident,
\$[REDACTED] disease - policy limit, and
\$[REDACTED] disease each - employee;

except as respects Subcontractors in which case limits on this policy will be as determined by the CM but will be no less than

\$[REDACTED] each accident.

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\$ [REDACTED] disease - policy limit, and
\$ [REDACTED] disease - each employee.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

Coverage shall include United States Longshore and Harbor Workers ("USL&H") and Maritime coverage endorsements if such exposures exist.

2. **Business Automobile Liability Insurance:** Each of the Project Construction Parties shall procure and maintain their own business automobile policy, which shall contain a Combined Single Limit ("CSL") of at least \$ [REDACTED] per occurrence (except as respect to Subcontractors, in which case limits on such policy will be as determined by the CM but will not be less than \$ [REDACTED] per occurrence), and include coverage for:

- (a) Bodily injury and property damage; and
- (b) Any and all vehicles owned, used or hired.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

3. **Commercial General Liability ("CGL") Insurance:** Each of the Project Construction Parties shall procure and maintain its own general liability and/or excess liability insurance to comply with this **Section I. (B) (3)**. For Contractors and all Subcontractors, such insurance shall be on form ISO CG 00 01 or its equivalent. Coverage will apply to all work or services performed.

For Enrolled Parties, the CM shall have the OCIP Administer request CGL insurance cover risks not covered by the OCIP.

Limits of liability shall be \$ [REDACTED] per occurrence and in the aggregate (except for Subcontractors in which case limits on this policy will be as determined by the CM but will not be less than \$ [REDACTED] per occurrence). Contractors and Subcontractors shall include the CM and each Owner, irrespective of the capacities in which it participates in a Project Component, as Additional Insureds (unless otherwise included as a Named Insured) on the most current version of ISO CG 20 10 and CG 20 37 or their equivalents. Contractors and Subcontractors insurance shall be considered primary, without right of contribution, from any other insurance, which is carried by CM and each Owner.

The CM, at its discretion, may allow the above limits to be met by any combination of primary and/or excess liability insurance limits.

Each of OCIP Insurance Coverage policies shall include a) Waivers of Subrogation in favor of the CM; each Owner, and all Contractors and Subcontractors enrolled in the OCIP, b) except for the CGL OCIP Insurance policy include the CM and each Owner as Additional Insured, and c) as Additional Insureds will be primary and non-contributory as respects any similar insurance that may be available to the CM and Owners.

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4. **Professional Liability Insurance:** The CM shall have procured and maintained by any Contractor or Subcontractor performing professional services for any Project Component that with total limits of \$[REDACTED] each claim/\$[REDACTED] annual aggregate; however, the CM has the discretion to require less insurance for smaller contracts. This coverage must remain in force and effect for a minimum of five years after completion of the professional services being performed or contract termination.
5. **Contractors Equipment Insurance:** All Contractors (including a Contractor that is also an Owner) shall be required to release the CM and each Owner, irrespective of the capacities in which it participates in a Project Component, (or otherwise accept the full risk of loss or damage therefor), from all claims for loss or damage to or loss of use of such Contractor's tools, machinery, equipment, motor vehicles or any other property whether owned, rented, or leased by the Contractor in or about the OCIP Site and shall purchase such insurance in respect thereto as the Contractor deems appropriate. Contractors shall require similar releases in favor of the CM and each Owner, irrespective of the capacities in which it participates in a Project Component, from Subcontractors.
6. **Railroad Protective Liability Insurance:** At the discretion of the CM, applicable Contractors will purchase and maintain Railroad Protective Liability ("RRPL") insurance in connection with work across, under or adjacent to railroad tracks or railroad right-of-way. The policy shall name the specific railroad requiring such coverage as Named Insured and for such limits of liability as shall be as required by the railroad. This requirement can be satisfied by participating in the railroad's group program or waiver if so offered.
7. **Watercraft Liability Insurance:** At the discretion of the CM, watercraft insurance may be required of any kind be any Contractor, or by anyone else on a Contractor's behalf or otherwise as part of the Construction Work. In the event watercraft insurance is requested, the Contractor shall maintain, or cause the operator of the watercraft to maintain, watercraft public liability insurance covering bodily injury, property damage and passenger liability for any watercraft owned, used, operated or hired in connection with the Construction Work. The policy(ies) shall provide limits of not less than \$[REDACTED] combined single limit for bodily injury and property damage per occurrence (& aggregate) and list the CM and each Owner, irrespective of the capacities in which it participates in the Project Component, as additional insureds. Contractors and Subcontractors insurance shall be considered primary, without right of contribution, from any other insurance which is carried by CM and each Owner. In addition, insurer(s) shall waive their right of subrogation against CM and each Owner.
8. **Aircraft Liability Insurance:** At the discretion of the CM, aircraft insurance may be required of a Contractor, or by anyone else on a Contractor's behalf or otherwise as part of the Construction Work. In the event aircraft insurance is requested, the Contractor shall maintain, or cause the operator of the aircraft to maintain, aircraft public liability insurance covering bodily injury, property damage and passenger liability for any aircraft owned, used, operated or hired in connection with the Construction Work. The policy(ies) shall provide limits of

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not less than \$ [REDACTED] combined single limit for bodily injury and property damage per occurrence (& aggregate) and list the CM and each Owner, irrespective of the capacities in which it participates in a Project Component, as additional insureds. Contractors and Subcontractors insurance shall be considered primary, without right of contribution, from any other insurance which is carried by CM and each Owner. In addition, insurer(s) shall waive their right of subrogation against CM and each Owner.

F. Additional Provisions:

1. All insurance policies required by this Insurance Plan shall be placed with insurance companies with a current A.M. Best Insurance Guide Rating of A- and Class VII, or better. Each policy shall ensure that it will not be cancelled, unless at least 60 days' prior written notice from such affected insurers (10 days for non-payment of premium) has been received by the CM and each Owner, irrespective of the capacities in which it participates in the Project.
2. Each Owner (including but not limited to an Owner acting as the CM) may utilize their existing insurance programs, including existing levels of self-insurance, retentions and deductibles, to comply with insurance required of Owners in this **Section I**.
3. The CM may allow Contractors and Subcontractors to maintain reasonable levels of retentions and deductibles as respects insurance coverage required of them in this **Section I**, only upon mutual agreement of, and specific written approval by, the Owners.
4. Certificates of Insurance: The CM and each Owner, irrespective of the capacities in which it participates in a Project Component shall, on or before the date on which insurance required hereunder is to become effective, furnish to the CM and other Owners certificates of insurance evidencing its compliance with applicable requirements hereunder.

Insurance certificates evidencing compliance of Contractors and Subcontractors, whether Enrolled Parties or otherwise, with the requirements of this Section F, shall be provided to the OCIP Administrator on or before the date on which insurance required hereunder is to become effective. The OCIP Administrator, on behalf of the CM and Owners shall maintain copies of certificates of insurance provided to it as required herein. The OCIP Administrator shall maintain a database of all certificates submitted by Contractors and Subcontractors and make such certificates available for inspection and copying upon request by any Owner or by the Management Committee.

In addition, the OCIP Administrator shall, promptly following the enrollment of an Enrolled Party under the OCIP, deliver to the Enrolled Party certificates of insurance and other evidence, as appropriate, documenting the Enrolled Party's enrollment in the OCIP.

For insurance required of Project Construction Parties that may expire and subject to renewal during the term of the Project, renewal certificates of

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insurance shall be provided to the CM and each Owner, or to the OCIP Administrator, as provided above to remain in compliance with Project insurance requirement.

5. Costs: Premiums, deductibles and self-insured retentions incurred by each Owner, in all capacities in which such Owner participates in the Project, to provide the insurance required by the OCIP Insurance Coverage do not constitute CM Costs, except to the extent that the Owner serving in the capacity as CM includes the costs of those standard insurance policies in its A&G costs reflected in **Appendix D** (Reimbursement Methodology For Maintenance Services) of the Operation and Maintenance Agreement. Premiums, deductibles and self-insured retentions incurred by each Contractor or Subcontractor, each specifically in such capacity, to provide the insurance required by this Plan, will be borne as provided in the applicable Construction Agreement as a part of the provision of goods or services.
6. Unaffiliated Third-Party Contractors: For Contracts between the CM and Third-Party Contractors (and their Subcontractors), the requirements with respect to Contractors and Subcontractors in this Insurance Plan will constitute part of the template documents to be negotiated with such Contractors and Subcontractors by the CM. The CM shall also require Owners that become Contractors to utilize such insurance requirements in the negotiation of Subcontracts with their Subcontractors.

II. OPERATIONAL PHASE INSURANCE

A. Operation Phase Policies

On or before the In-Service Date, the insurance coverages set forth below will be procured and maintained as indicated:

1. Workers' Compensation and Employers Liability insurance: Responsible Entities, Owners, Contractors and Subcontractors shall procure and maintain their own Workers' Compensation policy to comply with this **Section II. (A) (1)**. Workers' compensation will cover no less than the statutory liability under the workers' compensation laws of the states in which the work or services are performed.

The Employers Liability limits on these policies will be not less than

\$ [REDACTED] each accident,
\$ [REDACTED] disease - policy limit, and
\$ [REDACTED] disease each employee;

except as respects Subcontractors retained by Responsible Entities, including Maintenance Providers, in which case limits on this policy will be as determined by the CM but will be not less than

\$ [REDACTED] each accident,
\$ [REDACTED] disease - policy limit, and

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\$ [REDACTED] disease each employee.

The above limits may be met by any combination of primary and/or umbrella or excess liability insurance limits.

Coverage shall include United States Longshore and Harbor Workers ("USL&H") and Maritime coverage endorsements if each such exposure exists.

Each of the above policies will include a waiver of subrogation in favor of each Owner.

2. **Commercial General Liability ("CGL") insurance:** Each of the Responsible Entities, Owners, Contractors and Subcontractors shall procure and maintain its own policy to comply with this **Section II. (A) (2)** which CGL policy shall include (or not exclude) contractual liability coverage, independent contractors coverage and all other usual and customary CGL coverages.

CGL primary limits for Responsible Entities, Contractors and Subcontractors shall be at least \$ [REDACTED] per occurrence and \$ [REDACTED] general and products & completed operations aggregates; provided that through the use of any combination of primary and umbrella or excess liability insurance, a total of \$ [REDACTED] each occurrence and in the aggregate shall be maintained.

Subcontractors retained by Responsible Entities, including Maintenance Providers, shall be allowed to maintain CGL coverage at a minimum of \$ [REDACTED] per occurrence and in the aggregate through any combination of primary and umbrella or excess insurance.

3. **Business Automobile Liability insurance:** Each of the Responsible Entities, Owners, contractors and subcontractors will procure and maintain its own policy to comply with this **Section IIA(3)**. This insurance shall contain a Combined Single Limit ("CSL") of at least \$ [REDACTED] per occurrence, shall be procured and maintained by the Responsible Entities, contractors and subcontractors and include coverage for, but not be limited to, the following:

- (a) Bodily injury and property damage; and
- (b) Any and all vehicles owned, used or hired

4. **Watercraft Liability insurance:** If watercraft of any kind will be used by a Responsible Entity or by anyone else on a Responsible Entity's behalf, the Responsible Entity will require that the operator of the watercraft maintain watercraft liability insurance covering bodily injury, property damage and passenger liability for any watercraft used, operated or hired in connection with the operating services. The policy(ies) shall provide limits of \$ [REDACTED] per occurrence & in the aggregate and list the Responsible Entities and each Owner, irrespective of the capacities in which it participates in a Project Component, as Additional Insureds.

5. **Aircraft Liability insurance:** If aircraft of any kind is used by a Responsible Entity or by anyone else on a Responsible Entity's behalf, the Responsible Entity

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will require that the operator of the aircraft to maintain, aircraft public liability insurance covering bodily injury, property damage and passenger liability for any aircraft owned, used, operated or hired in connection with the Construction Work. The policy(ies) shall provide limits of not less than \$ [REDACTED] combined single limit for bodily injury and property damage per occurrence and list the Responsible Entity and each Owner, irrespective of the capacities in which it participates in a Project Component, as Additional Insureds.

6. **Railroad Liability insurance:** If a Responsible Entity works across, under or adjacent to railroad tracks or railroad rights-of-way, the Responsible Entity will maintain Railroad Protective Liability ("RRPL") insurance in connection with the Construction Work. The policy shall name the specific railroad requiring such coverage as Named Insured and for such limits of liability as shall be as required by the railroad. This requirement can be satisfied by participating in the railroad's group program or waiver if so offered. Additional Provisions.

Each of the above policies shall include Waivers of Subrogation in favor of Owners, and except for the Workers' Compensation and Employers Liability policy in **Section II. (A) (1)** above, each of these policies shall include each Owner as an Additional Insured and shall be primary and non-contributory as respects any other insurance maintained by each Owner.

The above limits may be met by any combination of primary and/or excess liability insurance limits.

III. Plan Policy Requirements

A. Additional Provisions

1. All insurance policies required by this Plan shall be placed with insurance companies with a current A.M. Best Insurance Guide Rating of A- and Class VII, or better. Each policy shall provide that it shall not be cancelled unless at least 60 days' prior written notice from such affected Insurers (10 days for non-payment of premium) has been received by the Owners.
2. Each Owner may utilize their existing liability insurance programs, including existing levels of self-insurance, retentions and deductibles, to comply with insurance required of Owners with respect to the Operational Insurance Phase policies required in **Section II.**
3. Responsible Entities, Contractors and Subcontractors may be allowed to maintain reasonable levels of self-insurance, retentions and deductibles as respects insurance coverage required of them in this Plan. Certificates of Insurance; Proof of Loss: On or before the date on which insurance required under this Plan is to become effective, valid certificates of insurance shall be provided to each Owner certificates of insurance demonstrating their respective compliance with insurance required herein. Each Responsible Entity and Owner shall maintain copies of certificates of insurance required to be furnished to it hereunder and shall make such certificates available for inspection and copying upon request by any Responsible Entity, Owner or by the Management Committee and as

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otherwise required to facilitate implementation of the requirements hereunder.

The party maintaining each insurance policy required herein shall take all actions reasonably required, and/or shall not do anything to inhibit, ensuring coverage is provided under such policies to any Additional Insured or Loss Payee.

4. Costs: The costs (including premiums, deductibles and self-insured retentions) of insurance required to be provided by the Maintenance Provider will constitute a Maintenance Cost (premiums to be reimbursed through A&G charges as provided in Appendix D (Reimbursement Methodology For Maintenance Services) of the Operation and Maintenance Agreement). The costs of insurance required and borne by the Control Center Authority or the Owner not serving as Maintenance Provider will not constitute a Maintenance Cost, except as provided in Section 4.2 of the Operation and Maintenance Agreement, which will be considered Control Center Costs. The costs of insurance required and incurred by each Contractor and Subcontractor will be borne as provided in the applicable agreement with such Contractor or Subcontractor as part of the provision of goods and services under such agreement. If the insurance in Section II. A (4) (Watercraft Liability insurance) of this Plan is required, the cost thereof will be a Maintenance Cost and charged directly to the Project.

IV. AVAILABILITY OF INSURANCE

The types, terms, limits and retentions/deductibles of construction phase or operational phase insurance coverages prescribed herein are those that are commercially available, reasonably attainable and the cost of which are reflective of the insurance industry's ability and willingness to provide at the time that these requirements were drafted.

APPENDIX E
NERC REQUIREMENTS

Section 1.1 Establishment of Guidelines

The Owners and Responsible Entities are committed to maintaining and operating the Project Components in full compliance with Applicable Energy Requirements, including NERC reliability standards. The Responsible Entities are responsible for NERC compliance with respect to the Project. Each Owner is responsible, however, for NERC compliance with respect to its own Discretely Owned Substation Assets. Because the Project will be maintained and operated by a Responsible Entity, which will employ its own utility-wide procedures to comply with Applicable Energy Regulations, including NERC reliability standards, the Parties hereby establish this initial set of guidelines. Aside from establishing such procedures to govern the manner in which the Owners and the Responsible Entities intend to effect compliance with NERC reliability standards, this **Appendix E** embodies a set of principles intended to guide the Owners and Responsible Entities as changes in Applicable Energy Regulations occur and modifications to the Owners' compliance-related practices and procedures become necessary. The Parties intend that responsibility for compliance with NERC reliability standards applicable to the Project be managed in a way that (i) is compatible with the compliance programs and existing compliance responsibilities of each of the Owners and Responsible Entities, (ii) minimizes the collective and individual exposure of the Owners and Responsible Entities to liability for NERC-related violations and penalties, and (iii) avoids unnecessary duplication of NERC compliance efforts. The Parties further intend to satisfy the NERC Rules of Procedure (NERC ROP, Section 501.1.4.3) requiring that only one party be responsible for compliance with the applicable reliability standard requirements for each Project Component.

Section 1.2 Assigned Responsibilities

1.2.1 Maintenance Provider and Control Center Authority Responsibilities. As of the Effective Date, the Parties agree that each Responsible Entity shall be responsible under this Agreement for compliance with Applicable Energy Regulations, including the NERC Transmission Owner, Transmission Operator, and Transmission Planner reliability standards. When necessary, each Responsible Entity shall advise all appropriate Governmental Bodies of its assigned responsibility. Notwithstanding anything to the contrary herein, an Owner that is not named as the Responsible Entity for NERC Transmission Owner, Transmission Operator, or Transmission Planner compliance shall not be responsible to Governing Bodies for compliance obligations of a "Transmission Owner", "Transmission Operator" or "Transmission Planner" under NERC reliability standards applicable to such Project Component; **provided, however**, that the foregoing shall not release the Owners from or modify the pro-rata contribution obligations expressly set forth in **Section 1.3.1** of this **Appendix E**.

Section 1.3 Compliance Failure

1.3.1 Responsibility. If a Governmental Body concludes that there has been failure to comply with Applicable Energy Regulations and such failure relates to any Project Component, responsibility for economic penalties imposed on account of such failure will be as follows:

- (i) if the failure arises from the gross negligence, willful misconduct or intentional misconduct of the Responsible Entity that is responsible for compliance with the applicable standard of such Project Component, such Responsible Entity shall bear full responsibility for such violation;

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- (ii) if the failure arises because the written procedures adopted by the Responsible Entity that is responsible for such Project Component are found to be deficient, such Responsible Entity shall bear full responsibility for such violation; or
- (iii) if the failure arises from any cause other than as described in **clause (i) or (ii)** above, each of the Owners shall bear responsibility in accordance with their respective Ownership Percentages.

For the avoidance of doubt, violations of Applicable Energy Regulations, including NERC reliability standards, relating solely to Discretely Owned Substation Assets are the sole responsibility of the Discretely Owned Substation Owner and are not the responsibility of the Parties to this Agreement in their respective capacities under this Agreement.

1.3.2 Enforcement. If any violation of Applicable Energy Regulations, including NERC reliability standards, are either self-certified or reported by a Responsible Entity or alleged by a Governmental Body and such violation is of the nature described in **Section 1.3.1(iii)** of this **Appendix E (“Possible Violations”)**, then the Responsible Entity for the Project Component to which such Possible Violations relate is entitled to contribution from the Owners for the economic penalty that could be imposed as a consequence of such Possible Violations by complying with the procedures set forth in this **Section 1.3.2.**

1.3.2.1 Notice of Possible Violations. If a Responsible Entity either: (i) self-certifies or reports the existence of a Possible Violation to a Governmental Body or (ii) receives a formal written advisement that a Governmental Body believes there is a Possible Violation pertaining to the Project Component (*e.g.*, a Notice of Potential Violation issued by the Midwest Reliability Organization), then the Responsible Entity, within thirty (30) days of delivering or receiving any such certification, report, or notice, shall give notice to the other Owner (a) describing such Possible Violation in reasonable detail; (b) indicating whether the Possible Violation involves only the Project (or a portion thereof) or other transmission facilities as well as the Project (or a portion thereof).

1.3.2.2 Contribution. The Responsible Entity shall specify one of the following alternatives in any notice provided to the Owners pursuant to **Section 1.3.2.1**: (i) it is thereby demanding contribution from the Owners pursuant to **Section 1.3.1(iii)**; or (ii) it will not demand contribution pursuant to **Section 1.3.1(iii)**. If the Responsible Entity either (a) fails to give the notice required pursuant to **Section 1.3.2.1** or (b) gives notice that it will not demand contribution from the Owners, then, it shall bear the full responsibility for any such Possible Violations.

1.3.2.3 Settlement.

1.3.2.3.1 Project Only Settlement. If the Responsible Entity intends to pursue a settlement of Possible Violation and has given notice that it will demand contribution from the other Owner, then, subject to **Section 1.3.2.3.4**, if the Possible Violation(s) involve only the Project (or a portion thereof), the Responsible Entity is entitled to enter into such settlement on behalf of the Owners. The Owners shall bear their respective Ownership Interest of any economic penalty and/or costs associated with any remedies adopted in lieu of economic penalty assessed in such settlement apportioned to the Project Component upon issuance of a final notice (*e.g.* Notice of Penalty Payment Due issued by the Midwest Reliability Organization) by the Governmental Bodies confirming the terms of such settlement, subject only to the right of any Owner to challenge the categorization of the conduct of the Responsible Entity as falling within the requirements of **Section 1.3.1(iii)**

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pursuant to the dispute resolution procedures set forth in **Section 2 of Schedule 1** to this Agreement.

1.3.2.3.2 Apportionment of Certain Settlements. If the Responsible Entity intends to pursue a settlement of Possible Violation and has given notice that it will demand contribution from the Owners, then, subject to **Section 1.3.2.3.4**, if the violation(s) involve both the Project (or a portion thereof) and transmission facilities other than the Project, upon reaching a settlement it intends to accept, it shall request that the Governmental Bodies with which it has reached agreement apportion culpability for each violation as between the affected Project and the other transmission facilities of the Responsible Entity implicated in such violations. The Responsible Entity shall not communicate its views of the appropriate apportionment to such Governmental Bodies in any manner whatsoever. The Responsible Entity shall disclose to the other Owner all reports prepared by Governmental Bodies that relate to their investigations, evaluations, or conclusions about the Possible Violation(s), any written responses or other written defenses presented to such Governmental Bodies by the Responsible Entity and the full and complete written terms of the proposed settlement (including correspondence and memoranda relating thereto). The apportionment of responsibility by the Governmental Bodies will be final and binding on the Responsible Entities and the Owners. Owners shall bear their respective Ownership Percentage of any economic penalty and/or costs associated with any remedies adopted in lieu of economic penalty assessed in such settlement apportioned to the Project Component upon issuance of a final notice (*e.g.* Notice of Penalty Payment Due issued by the Midwest Reliability Organization) by the Governmental Bodies confirming the terms of such settlement, subject only to the right of any Owner to challenge the categorization of the conduct of the Responsible Entity as falling within the requirements of **Section 1.3.1(iii)** pursuant to the dispute resolution procedures set forth in **Article 2 of Schedule 1** to this Agreement.

1.3.2.3.3 Failure to Apportion. If a Governmental Body refuses or fails to apportion culpability for a violation between the Project and the other transmission facilities of the Responsible Entity, then the Responsible Entity demanding contribution shall use its reasonable effort to fairly allocate any economic penalty imposed on account of such violation. If an Owner disagrees with such allocation, such Owner may utilize the dispute resolution procedures set forth in **Article 2 of Schedule 1** to this Agreement to challenge the allocation of such penalty; however, the Owners shall promptly pay the penalty (or alternate settlement) in a timely manner based on the Responsible Entity's allocation even if the dispute resolution process remains ongoing. The Responsible Entity has the burden of proving its entitlement to contribution and the fair allocation of the penalty by a preponderance of the evidence.

1.3.2.3.4 Limitation on Settlement. Notwithstanding anything to the contrary herein, no Responsible Entity has the authority to enter into a settlement of any Possible Violation that could constitute an admission of culpability by any Owner (other than the Owner that is and solely in its capacity as the Responsible Entity) without the prior written consent of such Owner.

1.3.2.4 Contest. If the Responsible Entity and any Governmental Body considering Possible Violations do not reach a settlement and at any point the Responsible Entity contests any finding of violation or penalty before a Governmental Body that has final administrative power to impose such penalty (*e.g.*, the Federal Energy Regulatory Commission), the Responsible Entity shall give notice to the other Owner prior to initiating such contest and thereafter it shall not oppose

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the intervention or other participation before such Governmental Body or in respect of any appeal of the decision of such Governmental Body by such other Owner.

1.3.2.5 Independent Rights of Owners.

1.3.2.5.1 Actions in Defense. Nothing in this **Appendix E** shall be construed to prevent or restrict any Owner that becomes subject to any request, inquiry or investigation of a Governmental Body from taking any action (or determining not to take any action) it deems appropriate in connection therewith; **provided, however**, no such Owner has the authority to take any action, including entering into any settlement, that could constitute an admission of culpability by any other Owner without the prior written consent of such Owner.

1.3.2.5.2 Contribution for Misallocation. If a penalty is paid, in whole or in part, by an Owner for a violation of Applicable Energy Regulations, which violation arises from the operation or maintenance of any Project Component of the Project for which another Owner, as a Responsible Entity, had the responsibility for compliance with Applicable Energy Regulations, then if the penalty imposed on the Owner exceeds the amount it would have borne had the penalty been allocated as provided pursuant to **Section 1.3.1** of this **Appendix E**, then such Owner will be entitled to contribution from the other Owner under **Section 16.2.3** of this Agreement, the Responsible Entity, or both, as appropriate.

APPENDIX F
TO
OPERATION AND MAINTENANCE AGREEMENT

ILLUSTRATIVE EXAMPLES OF OPERATING EXPENSE ALLOCATION

[See attached]

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Appendix F
Illustrative COSA Operating Expenses

I. Allocation of COSA Operating Expenses

This Appendix F defines the annual COSA Operating Expenses and associated COSA Fee designed to enable the Maintenance Provider to recover reasonable expenses, including overheads, associated with operation, maintenance, and repair of the Project Component. Each Owner that has had an Ownership Percentage in the Project Component during the prior 12-month period spanning January 1-December 31 shall pay the COSA Fee pursuant to this Appendix F.

All values for FERC Uniform System of Accounts account numbers set forth below shall be those provided for in the Maintenance Provider's then-current FERC Form 1.

II. Derivation of COSA Operating Expenses and Annual COSA Fee

The Maintenance Provider shall calculate the COSA Operating Expenses for each Owner as follows:

$$\text{COSA Operating Expenses} = A * B$$

Where:

$$A = Y + Z$$

$$B = \text{CGP/FERC 353}$$

CGP = total COSA gross plant

X = total substation gross plant (FERC 353) /total transmission gross plant, which will be the Substation Gross Plant Ratio expressed as a percentage. This represents the ratio of substation gross plant to total transmission.

Y = total transmission expenses and is defined as station expenses (FERC 562) plus maintenance of station equipment (FERC 570)

$$Z = \text{FERC 560} * X$$

The Maintenance Provider shall calculate the COSA Fee for each Owner as follows:

$$\text{Cosa Fee} = \text{COSA Operating Expenses} * \text{Project Component Ownership Percentage}$$

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Illustrative Example of COSA Operating Expense Allocations

<i>The below illustration is based on OTP's 2025 FERC Form1 and is for example purposes only</i>			
Equation Factor	Description of Factor Components	Totals	Notes
-	Total Substation Gross Plant - FERC 353	223,771,156	X = total substation gross plant (FERC 353) /total transmission gross plant
-	Total Transmission Gross Plant	846,151,774	
X		26%	
-	FERC 562 - Transmission Expenses - Station Expenses	\$ 367,273	Y = total transmission expenses and is defined as station expenses (FERC 562) + maintenance of station equipment (FERC 570)
-	FERC 570 - Transmission Expenses - Maintenance of Station Equipment	\$ 1,250,504	
Y		\$ 1,617,777	
	FERC 560 - Transmission Expenses - Operation Supervision & Engineering	\$ 163,530	Z = FERC 560 * X
Z		\$ 43,247	
A	Transmission Expenses to charge for Substation Maintenance	\$ 1,661,023	A= Y + Z
CGP	Substation Asset Gross Plant	\$ 10,000,000	\$10M figure used for illustration purposes
B	Substation Asset O&M Percent	4.47%	B = CGP/FERC353, expressed as a percentage
COSA Operating Expenses	Substation Asset O&M Cost	\$ 74,228.66	COSA Operating Expenses = A*B
COSA Fee	OTP Substation Asset Ownership	50%	Cosa Fee = COSA Operating Expenses * Project Component Ownership Percentage
	OTP Substation Asset O&M Costs	\$ 37,114.33	
COSA Fee	Party 2 Substation Asset Ownership	50%	Cosa Fee = COSA Operating Expenses * Project Component Ownership Percentage
	Party 2 Substation Asset O&M Costs	\$ 37,114.33	

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Attachment D

Proposed Form of Protective Agreement

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

PROTECTIVE AGREEMENT

This Protective Agreement (this “Agreement”) is entered into this ____ day of _____, by and between Otter Tail Power Company (“Applicant”) and _____ (“Intervenor”), and shall govern the use of all Protected Materials produced by Applicant to Intervenor, or vice versa, in connection with the proceeding before the Federal Energy Regulatory Commission (the “Commission”) in Docket No.[insert] (the “Proceeding”). Applicant and Intervenor are sometimes referred to herein individually as a “Party” or jointly as the “Parties.”

1. Applicant filed Protected Materials in the Proceeding and Intervenor is a Participant in the Proceeding, as the term Participant is defined in 18 C.F.R. § 385.102(b), or has filed a motion to intervene or a notice of intervention in the Proceeding. The Parties enter into this Agreement to govern the disclosure and confidentiality of Protected Material provided in connection with the Proceeding. Notwithstanding any order terminating the Proceeding, this Protective Agreement shall remain in effect unless and until specifically modified or terminated by the Commission or a court of competent jurisdiction. In the event this Protective Agreement terminates, the obligations of Reviewing Representatives to maintain the confidentiality of Privileged Material and/or CEII as provided hereunder shall remain in effect for 18 months following the date of termination.

2. This Agreement applies to the following two categories of Protected Materials: (A) a Party may designate as protected those materials which customarily are treated by that Party as commercially sensitive or proprietary, which are not otherwise available to the public, and which, if disclosed, would subject that Party or its customers to risk of competitive disadvantage or other business injury (“Privileged Material”); and (B) a Party shall designate as protected those materials which contain critical energy infrastructure information, as defined in 18 C.F.R. § 388.113(a) and (c) (“Critical Energy Infrastructure Information” or “CEII”).¹

3. Privileged Material shall include:

¹ This Agreement does not alter the requirements of 18 C.F.R. § 388.112 and 18 C.F.R. § 388.113.

- A. Material (including depositions) provided by a Participant in response to discovery requests or filed with the Commission, and that is designated as Privileged Material by such Participant;
 - B. Material that is privileged under federal, state, or foreign law, such as work-product privilege, attorney-client privilege, or governmental privilege, and that is designated as Privileged Material by such Participant;
 - C. Any information contained in or obtained from such designated material;
 - D. Any other material which is made subject to this Protective Agreement by the Presiding Administrative Law Judge ("Presiding Judge") or the Chief Administrative Law Judge ("Chief Judge") in the absence of the Presiding Judge or where no presiding judge is designated, the Federal Energy Regulatory Commission ("Commission"), any court, or other body having appropriate authority, or by agreement of the Participants (subject to approval by the relevant authority);
 - E. Notes of Privileged Material (memoranda, handwritten notes, or any other form of information (including electronic form) which copies or discloses Privileged Material); or
 - F. Copies of Privileged Material.
4. Privileged Material does not include:
- A. Any information or document that has been filed with and accepted into the public files of the Commission, or contained in the public files of any other federal or state agency, or any federal or state court, unless the information or document has been determined to be privileged by such agency or court;
 - B. Information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Protective Agreement; or
5. For purposes of this Agreement, the following additional definitions apply:
- A. "Non-Disclosure Certificate" shall mean the certificate attached to this Protective Agreement, by which Participants granted access to Privileged Material and/or CEII must certify their understanding that such access to such material is provided pursuant to the terms and restrictions of this Protective Agreement, and that such Participants have read the Protective Agreement and agree to be bound by it. All executed Non-Disclosure Certificates must be provided to the Participants.

- B. “Reviewing Representative” shall mean a person who has signed a Non-Disclosure Certificate and who is:
- i. An attorney who has made an appearance in this Proceeding for a Participant;
 - ii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney who has made an appearance in this Proceeding on behalf of a Participant;
 - iii. An expert or an employee of an expert retained by a Participant for the purpose of advising, preparing for, submitting evidence or testifying in this Proceeding;
 - iv. A person designated as a Reviewing Representative by order of the Presiding Judge, the Chief Judge, or the Commission; or
 - v. An employee or other representative of Participants appearing in this Proceeding with significant responsibility for this Proceeding.

6. Protected Materials shall be made available under the terms of this Protective Agreement only to Participants and only to their Reviewing Representatives as provided in this Protective Agreement. The contents of Privileged Material, CEII, or any other form of information that copies or discloses such materials shall not be disclosed to anyone other than in accordance with this Protective Agreement and shall be used only in connection with this specific Proceeding.

7. All Protected Materials must be maintained in a secure place. Access to those materials must be limited to Reviewing Representatives specifically authorized pursuant to this Protective Agreement.

8. Protected Materials must be handled by each Participant and by each Reviewing Representative in accordance with the Non-Disclosure Certificate executed pursuant to this Protective Agreement. Privileged Material and/or CEII shall not be used except as necessary for the conduct of this Proceeding, nor shall they (or the substance of their contents) be disclosed in any manner to any person except a Reviewing Representative who is engaged in this Proceeding and who needs to know the information in order to carry out that person’s responsibilities in this Proceeding. Reviewing Representatives may make copies of Privileged Material and/or CEII, but such copies automatically become Privileged Material and/or CEII. Reviewing Representatives may make notes of Privileged Material, which shall be treated as Notes of Privileged Material if they reflect the contents of Privileged Material.

9. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph 9, such Reviewing Representative may not use information contained in any Privileged Material and/or CEII obtained in this Proceeding for a commercial purpose (e.g., to give a Participant or competitor of any Participant a commercial advantage):

- A. Energy marketing;
- B. Direct supervision of any employee or employees whose duties include energy marketing; or
- C. The provision of consulting services to any person whose duties include energy marketing.

10. If a Participant wishes to designate a person not described in Paragraph 5.B above as a Reviewing Representative, the Participant must seek agreement from the Participant providing the Privileged Material and/or CEII. If an agreement is reached, the designee shall be a Reviewing Representative with respect to those materials. If no agreement is reached, the Party seeking the designation may submit the dispute regarding the designation to the Commission for resolution. Pending such resolution, the person for whom the designation is sought shall not have access to Protected Material.

11. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Material pursuant to this Protective Agreement until three business days after that Reviewing Representative first has executed and served a Non-Disclosure Certificate.² However, if an attorney qualified as a Reviewing Representative has executed a Non-Disclosure Certificate, any participating paralegal, secretarial, and clerical personnel under the attorney's instruction, supervision, or control need not do so. Attorneys designated Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Agreement and must take all reasonable precautions to ensure that Privileged Material and/or CEII are not disclosed to unauthorized persons. All executed Non-Disclosure Certificates must be served on all Participants on the official service list maintained by the Secretary of the Commission for the Proceeding.

² During this three business day period, a Party may file an objection with the Presiding Judge or Commission contesting that such individual qualifies as a Reviewing Representative, and the individual shall not receive access to the Protected Material until resolution of the dispute.

12. Any Reviewing Representative may disclose Protected Material to any other Reviewing Representative as long as both Reviewing Representatives have executed a Non-Disclosure Certificate. In the event any Reviewing Representative to whom Privileged Material and/or CEII are disclosed ceases to participate in this Proceeding or becomes employed or retained for a position that renders him or her ineligible to be a Reviewing Representative, access to such materials by that person shall be terminated. Even if no longer engaged in this Proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Agreement and the Non-Disclosure Certificate for as long as the Protective Agreement is in effect.

13. All Protected Material in this Proceeding filed with the Commission, submitted to the Presiding Judge, or submitted to any Commission personnel, must comply with 18 C.F.R. § 388.112 (for Privileged Material) and/or 18 C.F.R. § 388.113 (for CEII) and the Commission's *Notice of Document Labelling Guidance for Documents Submitted to or Filed with the Commission or Commission Staff*, including by creating and filing both public and non-public versions of documents, with suitable redactions and markings so as to maintain the confidentiality of Protected Material.

14. If any Participant desires to include, utilize, or refer to Privileged Material or information derived from Privileged Material in testimony or other exhibits during the hearing in this Proceeding in a manner that might require disclosure of such materials to persons other than Reviewing Representatives, that Participant first must notify both counsel for the disclosing Participant and the Commission, and identify all such Privileged Material. Thereafter, use of such Privileged Material will be governed by procedures determined by the Commission.

15. Nothing in this Protective Agreement shall be construed as precluding any Participant from objecting to the production or use of Privileged Material and/or CEII on any appropriate ground.

16. Nothing in this Agreement shall preclude any Party from requesting the Commission or any other body having appropriate authority to find that this Agreement should not apply to all or any materials previously designated as Protected Materials pursuant to this Agreement. The Commission may alter or amend this Agreement as circumstances warrant at any time during the course of the Proceeding.

17. The Parties may amend this Agreement only by mutual consent and in writing; provided, however, that a Party has the right to seek changes to this Agreement as appropriate from the Commission.

18. Subject to Paragraph 21, the Presiding Judge (or the Chief Judge in the Presiding Judge's absence or where no presiding judge is designated), or the Commission shall resolve any disputes arising under this Protective Agreement pertaining to Privileged Material according to the following procedures. Prior to presenting any such dispute to the Presiding Judge, the Chief Judge, or the Commission, the Participants to the dispute shall employ good-faith best efforts to resolve it.

- A. Any Participant that contests the designation of material as Privileged Material shall notify the Participant that provided the Privileged Material by specifying in writing the material for which the designation is contested.
- B. In any challenge to the designation of material as Privileged Material, the burden of proof shall be on the Participant seeking protection. If the Presiding Judge, the Chief Judge, or the Commission finds that the material at issue is not entitled to the designation, the procedures of Paragraph 18 shall apply.
- C. The procedures described above shall not apply to material designated by a Participant as CEII. Material so designated shall remain subject to the provisions of this Protective Agreement, unless a Participant requests and obtains a determination from the Commission's CEII Coordinator that such material need not retain that designation.

19. The designator will have five (5) days in which to respond to any pleading requesting disclosure of Privileged Material. Should the Presiding Judge, the Chief Judge, or the Commission, as appropriate, determine that the information should be made public, the Presiding Judge, the Chief Judge, or the Commission will provide notice to the designator no less than five (5) days prior to the date on which the material will become public. This Protective Agreement shall automatically cease to apply to such material on the sixth (6th) calendar day after the notification is made unless the designator files a motion with the Presiding Judge, the Chief Judge, or the Commission, as appropriate, with supporting affidavits, demonstrating why the material should continue to be privileged. Should such a motion be filed, the material will remain confidential until such time as the interlocutory appeal or certified question has been addressed by the Motions Commissioner or Commission, as provided in the Commission's regulations, 18 C.F.R. §§ 385.714 and 385.715. No Participant waives its rights to seek additional administrative or judicial remedies after a Presiding Judge or Chief Judge decision regarding Privileged Material or the Commission's denial of any appeal thereof or determination in response to any certified question. The provisions of 18 C.F.R. §§ 388.112 and 388.113 shall apply to any requests under the Freedom of Information Act (5 U.S.C. § 552) for Privileged Material and/or CEII in the files of the Commission.

20. Privileged Material and/or CEII shall remain available to Participants until the later of (1) the date an order terminating this Proceeding no longer is subject to judicial review or (2) the date any other Commission Proceeding relating to the Privileged Material and/or CEII is concluded and no longer subject to judicial review. After this time, the Participant that produced the Privileged Material and/or CEII may request (in writing) that all other Participants return or destroy the Privileged Material and/or CEII. This request must be satisfied within fifteen (15) days of the date the request is made. However, copies of filings, official transcripts, and exhibits in this Proceeding containing Privileged Material, or Notes of Privileged Material, may be retained if they are maintained in accordance with Paragraph 7 of this Protective Agreement. If requested, each Participant also must submit to the Participant making the request an affidavit stating that to the best of its knowledge it has satisfied the request to return or destroy the Privileged Material and/or CEII. To the extent Privileged Material and/or CEII are not returned or destroyed, they shall remain subject to this Protective Agreement.

21. Regardless of any order terminating this Proceeding, this Protective Agreement shall remain in effect until specifically modified or terminated by the Presiding Judge, the Chief Judge, or the Commission. All CEII designations shall be subject to the “[d]uration of the CEII designation” provisions of 18 C.F.R. § 388.113(e).

22. Any violation of this Protective Agreement and of any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

The undersigned represents and warrants that he or she has authority to execute this Protective Agreement on behalf of the entity identified below. By its execution of this Protective Agreement, such entity agrees to be bound by its terms.

By: _____

Name: _____

Title: _____

Representing Otter Tail Power Company

By: _____

Name: _____

Title: _____

Representing Intervenor [insert name]

NON-DISCLOSURE CERTIFICATE

I hereby certify my understanding that access to Privileged Material and/or Critical Energy/Electric Infrastructure Information (CEII) is provided to me pursuant to the terms and restrictions of the Protective Agreement dated _____, 20__, by and between Otter Tail Power Company and [Intervenor] concerning materials in Federal Energy Regulatory Commission Docket No. _____ (the "Protective Agreement"), that I have been given a copy of and have read the Protective Agreement, and that I agree to be bound by it.

I understand that the contents of Privileged Material and/or CEII, any notes or other memoranda, or any other form of information that copies or discloses such materials, shall not be disclosed to anyone other than in accordance with the Protective Agreement. I acknowledge that a violation of this certificate constitutes a violation of an order of the Federal Energy Regulatory Commission.

By: _____

Printed Name: _____

Title: _____

Representing: _____

Date: _____