

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
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# **The Empire District Electric Company Open Access Transmission Tariff FERC Electric Tariff Second Revised Volume No. 2**

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**I. COMMON SERVICE PROVISIONS**

**1. Definitions**

**1.1 Ancillary Services:**

Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

**1.2 Application:**

A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

**1.3 Commission:**

The Federal Energy Regulatory Commission.

**1.4 Control Area:**

An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

- (1) match, at all times, the power output of the generators within the

electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

- (2) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- (3) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and
- (4) provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

**1.5 Curtailment:**

A reduction in firm or non-firm transmission service in response to a transmission capacity shortage as a result of system reliability conditions.

**1.6 Delivering Party:**

The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

**1.7 Designated Agent:**

Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

**1.8 Eligible Customer:**

- i. Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy

produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by Section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.

- ii. Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

#### **1.9 Good Utility Practice:**

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

#### **1.10 Open Access Same-Time Information System (OASIS):**

The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by

subsequent Commission orders dealing with OASIS.

**1.11 Part I:**

Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

**1.12 Parties:**

The Transmission Provider and the Transmission Customer receiving service under the Tariff.

**1.13 Point(s) of Delivery:**

Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under the Tariff.

**1.14 Point(s) of Receipt:**

Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under the Tariff.

**1.15 Regional Transmission Group (RTG):**

A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

**1.16 SPP:**

The Southwest Power Pool, Inc.

**1.17 Transmission Customer:**

Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under the Tariff.

**1.18 Transmission Provider:**

The Empire District Electric Company.

**1.19 Transmission Service:**

Transmission Service provided under the Tariff on a firm and non-firm basis.

**1.20 Transmission System:**

The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under the Tariff.

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**2. Ancillary Services**

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation Sources.



The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve - Spinning, and (iv) Operating Reserve - Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply. The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider.

If the Transmission Provider is a public utility providing transmission service but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, and 6) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 2.1 through 2.6 below list the six Ancillary Services.

**2.1 Scheduling, System Control and Dispatch Service:**

The rates and/or methodology are described in Schedule 1.

**2.2 Reactive Supply and Voltage Control from Generation Sources Service:**

The rates and/or methodology are described in Schedule 2.

**2.3 Regulation and Frequency Response Service:**

Where applicable the rates and/or methodology are described in Schedule 3.

**2.4 Energy Imbalance Service:**

Where applicable the rates and/or methodology are described in Schedule 4.

**2.5 Operating Reserve - Spinning Reserve Service:**

Where applicable the rates and/or methodology are described in Schedule 5.

**2.6 Operating Reserve - Supplemental Reserve Service:**

Where applicable the rates and/or methodology are described in Schedule 6.

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### **3. Open Access Same-Time Information System (OASIS)**

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR § 37 of the Commission's regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities). In the event available transmission capacity as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

The Southwest Power Pool, Inc. administers the Transmission Providers' OASIS on behalf of the Transmission Provider and is responsible for complying with the North American Energy Standards Board Wholesale Electric Quadrant standards incorporated by reference in Part 38 of the Commission's regulations.

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### **4. Local Furnishing Bonds**

#### **4.1 Transmission Providers That Own Facilities Financed by Local Furnishing**

**Bonds:**

This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code ("local furnishing bonds"). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

**4.2 Alternative Procedures for Requesting Transmission Service:**

- (i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.
- (ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of

the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

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## **5. Reciprocity**

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the Transmission Customer's corporate affiliates. A Transmission Customer that is a member of a power pool or Regional Transmission Group also agrees to provide comparable transmission service to the members of such power pool and Regional Transmission Group on similar terms and conditions over facilities used for the transmission of electric energy in interstate commerce owned,

controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy in interstate commerce owned, controlled or operated by the Transmission Customer's corporate affiliates.

This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

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## **6. Billing and Payment**

### **6.1 Billing Procedure:**

Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

**6.2 Interest on Unpaid Balances:**

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 C.F.R. . 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

**6.3 Customer Default:**

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission

Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

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## **7. Regulatory Filings**

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

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## **8. Force Majeure and Indemnification**



**8.1 Force Majeure:**

An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

**8.2 Indemnification:**

The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider.

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## **9. Dispute Resolution Procedures**

### **9.1 Internal Dispute Resolution Procedures:**

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon] by mutual agreement, such dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

### **9.2 External Arbitration Procedures:**

Any arbitration initiated under the Tariff shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk

power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable Commission regulations or Regional Transmission Group rules.

**9.3** Arbitration Decisions:

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Tariff and any Service Agreement entered into under the Tariff and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.

**9.4** Costs:

Each Party shall be responsible for its own costs incurred during the arbitration

process and for the following costs, if applicable:

- (A) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or
- (B) one half the cost of the single arbitrator jointly chosen by the Parties.

**9.5 Rights Under The Federal Power Act:**

Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

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**SCHEDULE 1**

**SCHEDULING, SYSTEM CONTROL, AND DISPATCH SERVICE**

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch

Service are to be based on the rates set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

\$ 285.185/MW year

\$ 23.765/MW month

\$ 5.484/MW week

\$ 0.781/MW day

\$ 0.033/MW hour

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Schedule 2, Reactive Supply and Voltage Control, 0.0.0 A

## **SCHEDULE 2**

### **REACTIVE SUPPLY AND VOLTAGE CONTROL FROM GENERATION OR OTHER SOURCES SCHEDULE**

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities and non-generation resources capable of providing this service (in the Control Area where the Transmission Provider's transmission facilities are located) that are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation or Other Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from

Generation or Other Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation or Other Sources Service must be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider. The charges for this service will be based on the values set forth below. Although the Transmission Customer is required to take this ancillary service from the Transmission Provider, the Transmission Customer may reduce the charge for this service to the extent it can reduce its requirement for reactive supply. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

\$ 673.879/MW year

\$ 56.157/MW month

\$ 12.959/MW week

\$ 1.846/MW day

\$ 0.077/MW hour

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### **SCHEDULE 3**

#### **REGULATION AND FREQUENCY RESPONSE SERVICE**

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The amount of and charges for this service are set forth below. A Transmission Customer purchasing Regulation and Frequency Response Service will be required to purchase an amount of reserved capacity equal to 1.01 percent of the Transmission Customer's reserved capacity for point-to-point Transmission Service or 1.01 percent of the Transmission Customer's network load responsibility for Network Integration Transmission Service. The billing determinants for this service shall be reduced by any

portion of the 1.01 percent purchase obligation that a Transmission Customer obtains from third parties or supplies itself. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

\$ 78,205.200/MW year

\$ 6,517.100/MW month

\$ 1,503.946/MW week

\$ 214.261/MW day

\$ 8.928/MW hour

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Status:

Effective

Order Date:

11/15/2010

Schedule 4, Energy Imbalance Service, 0.0.0 A

## **SCHEDULE 4**

### **ENERGY IMBALANCE SERVICE**

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Energy Imbalance obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the



Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

The Transmission Provider shall establish a deviation band of +/-1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied monthly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s). Parties should attempt to eliminate energy imbalances within the limits of the deviation band within sixty (60) days. If an energy imbalance is not corrected within sixty (60) days, the Transmission Customer shall compensate the Transmission Provider for such service at the same rate as set forth below for energy imbalances outside the deviation band. The Transmission Customer shall be charged for energy imbalances outside the deviation band whereby actual delivered energy is greater than scheduled energy. The compensation for this underscheduled energy shall be a charge up to 110% of the Transmission Provider's monthly system average fuel and purchased power costs (excluding demand charges) for Net System Input for the month in which the imbalance occurred. The Transmission Provider shall compensate the Transmission Customer for energy imbalances outside the deviation band whereby scheduled energy is greater than actual delivered energy. The compensation for this overscheduled energy shall be a charge of 90% of the Transmission Provider's monthly system average fuel and purchased power costs (excluding demand charges) for Net System Input for the month in which the imbalance occurred.

Average fuel and purchased power costs (excluding demand charges) will be calculated for each month using the following formula.

1. Generation (Fuel)	\$	Kwh
2. Power Purchased for System (Excluding Demand Charges)	\$	Kwh

3. Less: Net Interchange (Exchange Energy and Off-System Fuel)	\$	Kwh
4. Totals (1+2+3)	Fm	Kwh
5. Energy Losses (2.71% of Kwh in 4)		Kwh
6. Net Kwh Delivered (4-5)		Sm
7. Monthly Average Cost	100x(Fm÷Sm)	¢/Kwh

Fuel costs shall consist of fuel consumed in the Company's electric generating plants as recorded in Section 151 of the F.E.R.C. Uniform System of Accounts.

Purchased power costs shall be the net energy cost of energy purchases, exclusive of capacity or demand charges.

Fuel and purchased power costs shall exclude inter-system sales as well as their associated energy (Kwh).

Exchange energy costs shall be average system fuel costs.

Off-system fuel costs shall be the actual identifiable fuel costs associated with off-system sales.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Schedule 4A, Reserve Sharing Energy Charges, 0.0.0 A

## SCHEDULE 4A

### RESERVE SHARING ENERGY CHARGES

#### I. General

The rate to be charged by The Empire District Electric Company ("EDE") when supplying reserve sharing energy during a reserve sharing activation shall be the rate as provided for in this Schedule 4A, as such rate may be changed from time to time.

#### II. Rates

When providing energy assistance supplied during reserve sharing activation, EDE shall be compensated in accordance with the following:

- 1.0 The terms Locational Imbalance Price (“LIP”) and Settlement Location as used herein are defined in the Southwest Power Pool, Inc. open access transmission tariff (“SPP OATT”).
- 2.0 Payment will be financial, and accounting for reserve sharing energy will be in whole megawatt-hours.
- 3.0 For energy provided during a reserve sharing activation, the charges shall be the greater of: (i) the hourly LIP at the Settlement Location used to provide such service, per megawatt-hour; or (ii) 110% of the incremental cost of the resource(s) used to provide such service, provided, however, where the incremental costs includes purchased power, the adder for purchased power shall be capped at 1 mill/kWh (\$1/mWh).
- 4.0 As used in this Schedule 4A, the term “incremental cost” shall mean any cost that would not have been incurred if the reserve sharing energy had not been supplied, including: the cost of fuel; operation and maintenance costs; energy provided for electric losses; purchased power; start-up and shut-down costs; charges assessed to EDE under Attachment AK of the SPP OATT and, as applicable, charges assessed to EDE pursuant to reserve sharing activation participant’s reserve sharing service schedules or the Western Systems Power Pool Rate Schedule FERC No. 6 in conjunction with reserve sharing energy supplied; and any other cost that would not have been otherwise incurred if the reserve sharing energy had not been supplied. The term “incremental costs” does not include the cost of Transmission Service or capacity.
- 5.0 In addition to the charges outlined above, the buyer shall pay transmission charges associated with the delivery of reserve sharing energy pursuant to the provisions of the SPP OATT.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Schedule 5, Operating Reserve - Spinning Reserve Service, 0.0.0 A

## **SCHEDULE 5**

### **OPERATING RESERVE - SPINNING RESERVE SERVICE**

Spinning Reserve Service is needed to serve load immediately in the event of a

system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The amount of and charges for this service are set forth below. A Transmission Customer purchasing Spinning Reserve Service will be required to purchase an amount of reserved capacity equal to 1.67 percent of the Transmission Customer's reserved capacity for point-to-point Transmission Service or 1.67 percent of the Transmission Customer's network load responsibility for Network Integration Transmission Service. The billing determinants for this service shall be reduced by any portion of the 1.67 percent purchase obligation that a Transmission Customer obtains from third parties or supplies itself. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

\$ 78,205.200/MW year

\$ 6,517.100/MW month

\$ 1,503.946/MW week

\$ 214.261/MW day

\$ 8.928/MW hour

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010 Status: Effective  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated Order Date:  
11/15/2010  
Schedule 6, Operating Reserve - Supplemental Reserve Service, 0.0.0 A

## **SCHEDULE 6**

### **OPERATING RESERVE - SUPPLEMENTAL RESERVE SERVICE**

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load or other non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The amount of and charges for this service are set forth below. A Transmission Customer purchasing Supplemental Reserve Service will be required to purchase an amount of reserved capacity equal to 1.67 percent of the Transmission Customer's reserved capacity for point-to-point Transmission Service or 1.67 percent of the Transmission Customer's network load responsibility for Network Integration Transmission Service. The billing determinants for this service shall be reduced by any portion of the 1.67 percent purchase obligation that a Transmission Customer obtains from third parties or supplies itself. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission

Provider by the Control Area operator.

\$ 146,184.443/MW year

\$ 12,182.037/MW month

\$ 2,811.239/MW week

\$ 400.505/MW day

\$ 16.688/MW hour

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Schedule 7, Firm Point-to-Point Transmission Service, 0.0.0 A

## **SCHEDULE 7**

### **LONG-TERM AND SHORT-TERM FIRM POINT-TO-POINT TRANSMISSION SERVICE**

#### 1. Demand Charge

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below:

**(Losses Not Supplied by Transmission Provider):**

\$ 15,382.514 /MW of Reserved Capacity per year

\$ 1,281.876 /MW of Reserved Capacity per month

\$ 295.817 /MW of Reserved Capacity per week

\$ 59.164 /MW of Reserved Capacity per day (on-peak)

\$ 42.260 /MW of Reserved Capacity per day (off-peak)

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall

not exceed the rate specified for weekly delivery times the highest amount in megawatts of Reserved Capacity in any day during such week.

All billing for Firm Transmission Service shall be based on the Transmission Customer's Reserved Capacity. Firm Transmission Service reserved will be billed regardless of whether delivery or receipt of energy is scheduled by the Transmission Customer. The Transmission Provider shall not be obligated to provide Firm Transmission Service in excess of the Reserved Capacity for Firm Transmission Service.

2. Compensation for Energy Losses

If not supplied by the Transmission Customer, the charge for energy losses associated with firm Transmission Service scheduled under this Tariff shall be computed as the product of (a) an energy loss factor of 2.71 percent times (b) the energy scheduled by the Transmission Customer times (c) an energy loss rate equal to the annual system average cost for Net System Input for the prior year.

3. Discounts

If the Transmission Provider offers an Affiliate a rate discount or attributes a discounted transmission rate to its own transactions, the Transmission Provider must offer at the same time the same discounted Firm Point-To-Point Transmission Service rate to all Eligible Customers on the same path and on all unconstrained transmission paths. Information regarding any firm transmission discounts must be posted on the OASIS pursuant to Part 37 of the Commission's regulations. In addition, discounts to non-affiliates must be offered in a not unduly discriminatory manner.

The Empire District Electric Company  
Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Schedule 8, Non-Firm Point-to-Point Transmission Service, 0.0.0 A

Status: Effective  
Order Date:

## **SCHEDULE 8**

### **NON-FIRM POINT-TO-POINT TRANSMISSION SERVICE**

#### 1. Demand Charge

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-To-Point Transmission Service up to the sum of the applicable charges set forth below:

##### **Daily-Monthly Service**

The demand charge shall be agreed upon by the parties at the time that service is reserved and in no event shall exceed:

##### **(Losses Not Supplied by Transmission Provider):**

\$ 15,382.514 /MW of Reserved Capacity per year

\$ 1,281.876 /MW of Reserved Capacity per month

\$ 295.817 /MW of Reserved Capacity per week

\$ 59.164 /MW of Reserved Capacity per day (on-peak)

\$ 42.260 /MW of Reserved Capacity per day (off-peak)

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified above for Weekly delivery times the highest amount in megawatts of Reserved Capacity in any day during such week.

All billing shall be based on the Transmission Customer's reservation in Megawatts of Non-Firm Transmission Service. Daily, Weekly, and Monthly Service will be billed regardless of whether delivery or receipt of energy is scheduled by the



Transmission Customer. If, however, service is curtailed by the Transmission Provider, the Transmission Customer will receive a credit for the period of the reservation that was curtailed. The Transmission Provider shall not be obligated to provide service in excess of the amount of capacity reserved by the Transmission Customer.

**Hourly Service**

The demand charge shall be agreed upon by the parties at the time that service is reserved and in no event shall exceed:

**On-peak:**

\$ 3.698/Mwh

**Off-peak:**

\$ 1.756/Mwh

The total demand charge in any day, pursuant to a reservation for Hourly delivery, shall not exceed the rate specified above for Daily delivery times the highest amount in Megawatts of Reserved Capacity in any hour during such day. In addition, the total demand charge in any week, pursuant to a reservation for Hourly or Daily delivery, shall not exceed the rate specified for Weekly delivery times the highest amount in megawatts of Reserved Capacity in any hour during such week.

The Transmission Customer shall be billed on the basis of the Megawatt-hours of energy scheduled.

2. Compensation for Energy Losses

If not supplied by the Transmission Customer, the charge for energy losses associated with non-firm Transmission Service scheduled under this Tariff shall be computed as the product of (a) an energy loss factor of 2.71 percent times (b) the energy

scheduled by the Transmission Customer times (c) an energy loss rate equal to the annual system average cost for Net System Input for the prior year.

3. Discounts

If the Transmission Provider offers an Affiliate a rate discount or attributes a discounted transmission rate to its own transactions, the Transmission Provider must offer at the same time the same discounted Non-Firm Point-To-Point Transmission Service rate to all Eligible Customers on the same path and on all unconstrained transmission paths. Information regarding any non-firm transmission discounts must be posted on the OASIS pursuant to Part 37 of the Commission's regulations. In addition, discounts to non-affiliates must be offered in a not unduly discriminatory manner.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010 Status: Effective  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated Order Date:  
11/15/2010  
Attachment A, [OMITTED], 0.0.0 A

**ATTACHMENT A**

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010 Status: Effective  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated Order Date:  
11/15/2010  
Attachment B, [OMITTED], 0.0.0 A

**ATTACHMENT B**

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010

Status: Effective

Order Date:

Attachment C, [OMITTED], 0.0.0 A

**ATTACHMENT C**

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010

Status: Effective

Order Date:

Attachment D, [OMITTED], 0.0.0 A

**ATTACHMENT D**

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010

Status: Effective

Order Date:

Attachment E, [OMITTED], 0.0.0 A

**ATTACHMENT E**

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company  
Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Attachment F, [OMITTED], 0.0.0 A

Status: Effective  
Order Date:

## ATTACHMENT F

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Attachment G, [OMITTED], 0.0.0 A

Status: Effective  
Order Date:

## ATTACHMENT G

**[RESERVED]**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Attachment H, [OMITTED], 0.0.0 A

Status: Effective  
Order Date:

## ATTACHMENT H

### **ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR NETWORK INTEGRATION TRANSMISSION SERVICE AND RATE FOR THE PROVISION OF REAL POWER LOSSES**

For Purposes of Section 34.1, of this tariff, the Annual Transmission Costs of the Transmission Provider are as follows:

a. If the Transmission Customer supplies its own losses, the annual Transmission Cost shall be \$14,075,000.

The amounts in (1) shall be effective until amended by the Transmission Provider

or modified by the Commission.

If not supplied by the Network Customer, the charge for energy losses associated with Transmission Service scheduled under this Tariff shall be computed as the product of (a) an energy loss factor of 2.71 percent times (b) the energy scheduled by the Network Customer times (c) an energy loss rate equal to the annual system average cost for Net System Input for the prior year.

The Empire District Electric Company as of 11/15/2010

Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status: Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Attachment I, [OMITTED], 0.0.0 A

## ATTACHMENT I

[RESERVED]

The Empire District Electric Company as of 11/15/2010

Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status: Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

MBR Tariff, FERC Electric Tariff, First Revised Volume No. 3, 0.0.0A

## THE EMPIRE DISTRICT ELECTRIC COMPANY

### POWER SALES TARIFF FOR THE SALE OF ENERGY AND CAPACITY AT MARKET-BASED RATES

1. Availability. The Empire District Electric Company (“Empire” or “Seller”) makes electric energy and capacity available under this Tariff to any purchaser for resale.
2. Applicability. This Tariff is applicable to the following sales of energy or capacity by Empire not otherwise subject to a particular rate schedule of Empire:

- (a) all sales where title transfers at a point outside of the Empire balancing authority area; and
  - (b) all sales into the Southwest Power Pool, Inc. (SPP) energy imbalance market, even if title transfers at a point within the Empire balancing authority area, subject to the rules and mitigation specific to SPP's energy imbalance market.
- 3. Rates. All sales shall be made at rates established by agreement between the purchaser and Empire.
- 4. Other Terms and Conditions. All other terms and conditions of sales shall be established by agreement between purchaser and Empire.
- 5. Effective Date. This Tariff is effective on and after April 9, 1999.
- 6. Modifications. Empire may unilaterally apply to the Federal Energy Regulatory Commission or other regulatory agency having jurisdiction for a modification of this Tariff under section 205 of the Federal Power Act and the regulations promulgated under that act.
- 7. Compliance with Commission Regulations. Seller shall comply with the provisions of 18 CFR Part 35, Subpart H, as applicable, and with any conditions the Commission imposes in its orders concerning Seller's market-based rate authority, including orders in which the Commission authorizes seller to engage in affiliate sales under this tariff or otherwise restricts or limits the Seller's market-based rate authority. Failure to comply with the applicable provisions of 18 CFR Part 35, Subpart H, and with any orders of the Commission concerning Seller's market-based rate authority, will constitute a violation of this Tariff.
- 8. Limitations and Exemptions Regarding Market-Based Rate Authority. Empire currently does not have market-based rate authority in the Empire balancing authority area ("mitigated balancing authority area"). *The Empire District Electric Company, Inc.*, 116 FERC ¶ 61,150 (2006).
- 9. Mitigated Sales. Sales of energy and capacity are permissible under this tariff in all balancing authority areas where the Seller has been granted market-based rate authority. Sales of energy and capacity under this tariff are also permissible at the metered boundary between the Seller's mitigated balancing authority area and a balancing authority area where the Seller has been granted market-based rate authority provided: (i) legal title of the power sold transfers at the metered boundary of the balancing authority area where the seller has market-based rate authority; and (ii) if the Seller sells at the metered boundary of a mitigated balancing authority area at market-based rates, then neither it nor its affiliates can sell into that mitigated balancing authority area from the outside. Seller must retain, for a period of five years from the date of the sale, all data and information related to the sale that demonstrates compliance with items (i) and (ii) above.

10. Seller Category: Seller is a Category 2 seller, as defined in 18 C.F.R. 35.36(a).

**The Empire District Electric Company**

**Form of Service Agreement for the Sale of  
Energy and Capacity at Market-Based Rates**

This Service Agreement dated as of \_\_\_\_\_ is entered into by and between The Empire District Electric Company (“Empire”) and \_\_\_\_\_ (“Customer”). Empire agrees to furnish and the Customer agrees to purchase energy or capacity pursuant to the terms and conditions of Empire’s Power Sales Tariff for the Sale of Energy and Capacity at Market-Based Rates (“Tariff”). Rates, terms and conditions of specific transactions shall be agreed to in writing by Empire and the Customer but need not be filed with the Federal Energy Regulatory Commission (“FERC”) except where the transaction is for longer than one year.

Empire and the Customer agree that any fees for filing this Service Agreement with the FERC will be borne by the Customer. Empire and the Customer both understand that transactions under this Tariff are purely voluntary and will be entered into only if mutually beneficial and agreeable to both parties.

It is understood that in accordance with Article 8 of the Tariff, Empire may amend the rates and terms and conditions of the Tariff by notifying the Customer in writing and by making the appropriate filing with the FERC pursuant to the provisions of Section 205 of the Federal Power Act.

IN WITNESS HEREOF, the parties have caused this Service Agreement to be executed by their respective authorized officials.

THE EMPIRE DISTRICT ELECTRIC COMPANY

By: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

CUSTOMER:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status: Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

GFR Tariff, FERC Electric Tariff, Original Volume No. 4, 0.0.0 A

## **FULL REQUIREMENTS ELECTRIC SERVICE RATE SCHEDULE**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status: Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

I, Service Availability and Nature of Service, 0.0.0 A

### **I. SERVICE AVAILABILITY AND NATURE OF SERVICE**

- A. Availability. Service under this Rate Schedule is provided by The Empire District Electric Company (“Empire”) to any organization (“Customer”) that (1) is directly interconnected with Empire’s owned transmission or distribution facilities, (2) is authorized to resell the service to customers located solely within a franchised or certified service area and other territories that Customer has a statutory obligation or right to serve, (3) agrees to take service hereunder for a term of at least ten full Contract Years, and (4) has executed a Full Requirements Electric Service Agreement (“Agreement”) in the form shown as Attachment A hereto. Empire shall be required to serve only Load as that term is defined herein.
- B. No Dedicated Facilities. Any undertakings or commitments by Empire to any Customer under the Agreement or this Rate Schedule shall not constitute the dedication of generation facilities or the transmission system or any portion thereof of Empire to any Customer.



C. Customer Resources.

- i. Subject to all applicable interconnection and siting requirements, and any other applicable requirements, Customer may, at any time after the Effective Date of the Agreement, construct or acquire generating facilities on the load side of the Point(s) of Receipt, to be used to provide backup, standby or emergency power (“Customer Generation”). Customer shall separately meter (or Empire shall meter at Customer’s expense) the output of any Customer Generation to allow Empire to determine Customer’s Load unaffected by such generating facilities.
- ii. As long as Customer (or Empire) maintains adequate metering on generating facilities installed on the load side of the Point(s) of Receipt to measure hourly metered output of such Customer Generation in kWh, Customer may run such generating facilities at any time during the Term of the Agreement; provided, however, that such generating facilities shall not reduce Load or the amount of Full Requirements Electric Service that Customer is obligated to purchase from Empire under the Agreement. The metered output of generating facilities installed on the load side of the Point(s) of Receipt shall be added to calculate Customer’s Billing Demand.
- iii. Customer shall not, during the Term of the Agreement, acquire resources to serve or reduce Customer’s Load or take any action to reduce or eliminate Customer’s obligation to provide service to such Load. Customer may interconnect with and purchase power

from parallel generation when applicable State (Arkansas, Kansas, Missouri, or Oklahoma) or Federal statutory law mandates such purchases and Customer has no reasonable choice under such statute but to make such purchases.

- iv. Exhibit B to the Agreement listing Customer Resources may only be modified in writing to provide additional resources that Customer may acquire and utilize such additional resources upon mutual agreement between Empire and Customer; provided, however, that Customer shall not be precluded from acquiring resources during the Term of the Agreement and shall not utilize such resources to serve its Load during the Term of the Agreement except in order to provide backup, standby or emergency power as provided above.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

II, Service Definitions, Terms and Conditions, 0.0.0 A

## **II. SERVICE DEFINITIONS, TERMS AND CONDITIONS**

A. Definitions. Certain words and terms used in this Rate Schedule and the

Agreement, including all attachments thereto, shall have the following meaning:

- 1. **Agreement** shall mean the Full Requirements Electric Service Agreement between Empire and Customer and all attachments and exhibits thereto, as they may be amended, modified, or supplemented from time to time.

2. **Annual Update** is defined in Attachment E to this Rate Schedule.
3. **Billing Demand** shall be equal to the sum of the Coincidental Peak Demands for the Point(s) of Receipt, as listed in Exhibit A to the Agreement, during a Billing Month, including the coincident output from all Customer Resources described in Article I.C.i, but less any coincident output from Customer Resources described in Article I.C.iv of this Rate Schedule. Each billing demand shall be based on a 60 minute integrated demand that coincides with Empire's on-system peak hourly demand for the corresponding month. All demand billing units (kW) shall be adjusted for appropriate distribution losses to the transmission level closet to the Point(s) of Receipt; either through a calculated "average" loss factor for each Point of Receipt or through the use of variable loss factors programmed into a compensating meter. Empire shall make the determination as to which method is used and shall perform the necessary calculations (average or variable); but such calculations shall be subject to review by the Customer. An additional adjustment shall be made, pursuant to the Transmission Provider's applicable tariff that compensates for the transmission losses on Empire's system.
4. **Billing Energy** shall mean Firm Energy for the Billing Month, as adjusted for distribution and transmission losses as described in Article II.A.3 of this Rate Schedule.
5. **Billing Month** shall mean the most recently completed calendar month for which Empire delivered Full Requirements Electric Service to Customer.

6. **Business Day** means a day ending at 5:00 p.m. Central Prevailing Time (“CPT”), other than Saturday, Sunday, and any day which is a legally observed holiday or a day designated as a holiday by NERC; provided, however, that with respect to any payment due hereunder, a “Business Day” means a day ending at 5:00 p.m. CPT, other than a Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in the State of Missouri, are authorized by law to close.
7. **Claim** or **Claims** shall mean all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Rate Schedule or the Agreement, and the resulting losses, damages, expenses, attorneys’ fees and court cost, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of the Agreement.
8. **Coincidental Peak Demand** shall mean the 60-minute integrated demand measured in kW by the revenue-quality meters at the Point(s) of Receipt during the standard clock hour, adjusted for Losses, occurring at the time of Empire’s System Peak Demand during the Billing Month.
9. **Confidential Information** shall mean such information that a Party designates to remain confidential. Notwithstanding the foregoing, the following shall not constitute Confidential Information: (i) information which was already in a Party’s possession prior to its receipt from another Party and not subject to a requirement of confidentiality; (ii) information

which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to such Party by a contractual, legal or fiduciary obligation to the other Party; (iii) information which is or becomes publicly available through no fault of the Party; and (iv) the Annual Update.

10. **Contract Year** shall mean a twelve-consecutive-month period beginning at midnight on June 1 and ending at 23:59:59 on May 31 of the following year; provided, however, that the first Contract Year will begin on the Agreement's Effective Date and end on the next succeeding May 31. A period that does not begin on June 1 of any year shall not be considered a "full Contract Year."
11. **Customer Resources** shall mean any resources Customer acquires pursuant to the Agreement that are listed on Exhibit B to the Agreement, as may be amended from time to time.
12. **Defaulting Party** is defined in Article XII of this Rate Schedule.
13. **Customer Demand Charge** is the monthly Customer Demand Charge determined by the formula included on Attachment D to this Rate Schedule.
14. **Directly Assigned Transmission Facility** is any transmission asset, that is installed and solely used to provide service to the Customer and which is not a transmission asset that is included in the calculation of the transmission charges included in the SPP Open Access Transmission Tariff ("OATT").

15. **Early Termination Date** is defined in Article XII of this Rate Schedule.
16. **Effective Date** for this Rate Schedule shall be the date defined in Article III of the Agreement, but shall be subject to any delay that may be imposed by FERC.
17. **Energy** means three-phase, 60-cycle alternating current electric energy, expressed in kWh.
18. **Customer Energy Charge** is based on Empire's average system energy-related costs as calculated in accordance with Attachment D to this Rate Schedule.
19. **Customer Net Variable Charge** is defined in Item 5 of the GFR Template.
20. **Event of Default** is any event as described in Article XII of this Rate Schedule.
21. **FERC** shall mean the Federal Energy Regulatory Commission or its successor.
22. **Firm Energy** shall mean the amount of Energy to serve Load during the month to meet hourly Energy requirements, as measured in kWh by the revenue-quality meters at the Point(s) of Receipt, in each case without interruption except as provided for by the Agreement, adjusted for Energy input from Customer Resources, and adjusted for Losses associated with transmitting and distributing such Energy from the Points of Delivery to the Point(s) of Receipt.
23. **Force Majeure** shall mean, subject to the limits of Article XI of this Rate

Schedule, any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control that prevents one Party from performing its obligations under the Agreement, which is not within the reasonable control of, or the result of the negligence or intentional wrongdoing, by the Party claiming Force Majeure, and which, by the exercise of due diligence, the Party claiming the Force Majeure is unable to overcome or avoid or cause to be avoided.

24. **Generation Formula Rate (“GFR”)** shall mean the embedded-cost-based rate designed to recover all of Empire's reasonable cost of providing Full Requirements Electric Service to Customer including recovery of the original cost less depreciation of assets devoted to the generation of capacity and Firm Energy provided to Customer, all as detailed in Attachment D to this Rate Schedule.
25. **GFR Template** shall mean the template used to develop the GFR detailed in Attachment D to this Rate Schedule.
26. **Full Requirements Electric Service** shall mean the supply of capacity and Firm Energy by Empire to Customer to serve its entire Load, except for the Customer Resources as described in Article I.C of this Rate Schedule. Full Requirements Electric Service may fluctuate in real time and has a priority equivalent to Empire's other firm native load.
27. **Generation Resources** shall mean the generation assets owned by Empire

from time to time, including Empire's share of any jointly-owned generating units, and capacity purchases by Empire from all co-generators, qualifying facilities, and independent power producers.

28. **Interest Rate** means, with respect to Performance Assurance, for any date, two percent over the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under "Money Rates" or some other publication mutually acceptable to the Parties to the Agreement should the *Wall Street Journal* cease publication; provided the Interest Rate shall never exceed the maximum rate allowed by applicable law.
29. **Letter of Credit** shall mean one or more irrevocable, transferable standby letters of credit issued by (i) a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued, which acceptance shall not be unreasonably withheld. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.
30. **Load** shall mean the electric requirements of Customer's end-use customers located within the franchised or certificated retail service territory that Customer has a statutory or contractual right or obligation to serve. agreements with its.



31. **Losses** shall be the percentage authorized by the Transmission Provider's currently effective OATT multiplied by Customer's usage as measured by the revenue-quality meters installed at the Point(s) of Receipt. Compensation for distribution-related losses shall be made in accordance with Article II, Section A, items 3 & 4, above.
32. **Mistake** is set forth in Attachment E to this Rate Schedule.
33. **NERC** means the North American Electric Reliability Corporation or its successor.
34. **Network Integration Transmission Service** or "**NITS**" shall mean firm network transmission service, or successor service, as set forth in the Transmission Provider's OATT that provides for delivery of capacity and Firm Energy to the Point(s) of Receipt.
35. **OATT** means the Transmission Provider's Open Access Transmission Tariff on file at FERC, as may be amended from time to time.
36. **Party** means either Empire or Customer individually.
37. **Parties** mean Empire and Customer collectively.
38. **Performance Assurance** shall mean collateral in the form of either cash, Letters of Credit, or other security reasonably acceptable to the Requesting Party under the circumstances in an amount not to exceed the total of the highest three (3) month's invoice amounts in the most recent twelve (12) months under the Agreement as determined by the Requesting Party in a commercially reasonable manner.
39. **Points of Delivery** shall mean the points at which Generation Resources

connect to the facilities under the control of the Transmission Provider.

40. **Point(s) of Receipt** shall mean the point(s) on Customer's electric system, listed on Exhibit A to the Agreement, where Customer receives capacity and Firm Energy pursuant to the Agreement for the sole purpose of supplying Load.
41. **Rate Schedule** shall mean this Full Requirements Electric Service Rate Schedule and all attachments and exhibits hereto.
42. **SPP** shall mean the Southwest Power Pool, Inc. or its successor.
43. **System Peak Demand** shall mean the highest 60-minute demand incurred by Empire during any standard clock hour during the Billing Month. System Peak Demand shall be determined by the methodology used to determine monthly peaks on page 401b of Empire's FERC Form No. 1 (or successor or replacement page as designated by FERC).
44. **Term** is defined in Article III of the Agreement.
45. **Transmission Provider** means the entity or entities responsible for operating the transmission system used to deliver capacity, Firm Energy and, where applicable, associated ancillary services to the Point(s) of Receipt. The Transmission Provider is currently the SPP.
46. **Wholesale Distribution Agreement** means an agreement between Empire and Customer designed to recover the FERC-approved charges under Schedule 10 of the SPP OATT.

- B. Payment for Services. Within a reasonable time after the first day of each calendar month, Empire will submit an invoice to Customer for the charges for all services furnished under the Agreement for the latest Billing Month calculated in accordance with Attachment D to this Rate Schedule. Customer shall pay Empire any amounts due and payable hereunder within fifteen (15) days of the date said invoice is postmarked or delivered via another acceptable means. Any corrections or provable meter errors discovered by either Party will be adjusted on the next regular calendar month's invoice. Within one hundred twenty (120) days after termination of the Agreement, Empire shall provide an invoice to Customer covering all remaining outstanding costs pursuant to the Agreement and such invoice shall be paid by Customer within fifteen (15) days of the date said invoice is postmarked or delivered via another acceptable means. With regard to all invoices, Customer shall be deemed delinquent and interest may be added as calculated in accordance with 18 C.F.R. § 35.19a to the amount of any invoice from the date that such invoice becomes delinquent. For purposes of this Rate Schedule, delinquent means payment in arrears for at least 30 consecutive calendar days. All invoices shall be paid by electronic funds transfer, check, or by other mutually agreeable method(s), to the account designated by Empire.
- C. Payment Netting. Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to the Agreement through netting, in which case all amounts owed by each Party to the other Party under the Agreement, including interest,

payments and/or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. All amounts netted pursuant to this section shall not take into account or include any Performance Assurance or guarantee, which may be in effect to secure Customer's performance under the Agreement. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the Billing Period, that Party shall pay the sum in full when due.

- D. Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any invoice made pursuant to the Agreement; provided, however, that Empire's annual recalculation of the Annual Update shall be subject to review in accordance with the procedures set forth in Attachment E to this Rate Schedule. If requested, a Party shall provide to the other Party sufficient detail as to allow the Party to verify the accuracy of such invoice. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments to such invoice and the payments thereof will be made promptly and shall bear interest calculated in accordance with 18 C.F.R. § 35.19a from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of eighteen (18) months from the rendition thereof, and thereafter any objection shall be deemed waived. Notwithstanding anything to the contrary in any other provision of the Agreement, including the foregoing,

Customer has the right to review and challenge the non-Customer Net Variable Charge components of the Customer Energy Charge consistent with a customer's rights pursuant to the FERC's policies and precedents to review and challenge amounts recovered through the Fuel and Purchased Power component of the Customer Energy Charge..

- E. Disputed Invoices. Customer shall have the right to dispute invoices. If Customer, in good faith, disputes an invoice, Customer shall immediately notify Empire of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within two Business Days of such resolution along with any accrued interest, as calculated in accordance with 18 C.F.R. § 35.19a, from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned by Empire or deducted from subsequent invoices, at the option of Customer, with interest, as calculated in accordance with 18 C.F.R. § 35.19a, until the date paid or deducted from the invoice. Said interest calculation shall include the date of such overpayment but exclude the date repaid or deducted from the invoice.
- F. Adjustments. The formulas attached in Attachment D to this Rate Schedule refer to certain page and line numbers found in the FERC Form No. 1 used for reporting calendar year 2008 data ("2008 FERC Form No. 1"). From time to time, FERC changes the format of FERC Form No. 1. Such changes may render the references to FERC Form No. 1 set forth in Attachment D to this Rate Schedule inaccurate. Therefore, the page and line references of

Attachment D to this Rate Schedule shall be interpreted to refer to the pages and lines of the current version of FERC Form No. 1 that describe the data identified in Attachment D to this Rate Schedule by references to the 2008 FERC Form No. 1. In the event that FERC revises FERC Form No. 1 to combine two or more lines contained in the 2008 FERC Form No. 1, or makes other changes that affect the computation of the formula rates in Attachment D to this Rate Schedule, the formulas attached hereto in Attachment D to this Rate Schedule shall be interpreted to produce the same level of rates that would have resulted had FERC Form No. 1 remained unchanged. Data required under the cost of service GFR that is not reported in the FERC Form No. 1 for the applicable calendar year shall be supported with appropriate documentation, which shall be included in the work papers accompanying such annual adjustment.

- G. Mistakes. Mistakes shall be corrected as set forth in Section 4 of Article I of Attachment E to this Rate Schedule.
- H. Records. Empire and Customer shall keep (or as necessary cause to be kept by their respective agents) for a period of at least three (3) years such records as may be needed to afford a clear history, including quantity and pricing, of the Full Requirements Electric Service supplied pursuant to the Agreement. For any matters in dispute, Empire and Customer shall keep the records related to such matters until the dispute is resolved.
- I. Metering. All metering pursuant to the Agreement will be provided by Empire pursuant to the terms and conditions of a separate Wholesale

Distribution Agreement. Such metering being supplied will be revenue quality meters installed under the direction of the Transmission Provider.

- J. Temporary Service Interruption. Empire will use reasonable diligence in furnishing Firm Energy to Customer, but Empire does not guarantee that the supply of Firm Energy furnished to Customer will be uninterrupted or that voltage and frequency will be at all times constant. Temporary interruption of Firm Energy deliveries hereunder not attributable to the negligence or willful misconduct of Empire will not constitute a breach of the obligations of Empire under the Agreement, and Empire will not, in any such case be liable to Customer for damages resulting from any such temporary interruption of service.
- K. Service Curtailment. If Empire is required to curtail Firm Energy deliveries, then, upon being notified by the Transmission Provider or Empire, Customer will institute procedures that will cause a corresponding curtailment of Energy used by Customer for its Load. It is the express intention of this provision that any curtailment of Firm Energy shall be implemented by Empire on a comparable, not unduly discriminatory basis as to all firm loads served by Empire. If upon notification of a requirement to curtail, Customer fails to institute such procedures, Empire will be entitled to limit deliveries of Firm Energy to Customer in order to effectuate reductions in Energy deliveries, in the smallest amount that is operationally practical, equivalent to or greater than the reduction which would have been effected had Customer fulfilled its curtailment obligation hereunder during the period any shortage exists, and, in

such event, Empire will not incur any liability to Customer in connection with any such action so taken by Empire.

- L. Regulatory Jurisdiction. The provisions of this Rate Schedule and the Agreement, including, without limitation, the rates, charges and conditions of service, are subject to change by FERC. Except as provided in Attachment E of this Rate Schedule, Empire and Customer shall be entitled, at any time and from time to time, unilaterally and in the sole discretion of each, to apply for or to take other action to request such a change under Sections 205 or 206 of the Federal Power Act (“FPA”), respectively, and pursuant to the rules and regulations promulgated thereunder (Sections 205 or 206) or any other change that is required or allowed by any legal, regulatory, statutory or other governing authority. The standard of review FERC shall apply when acting on such proposed changes shall be the “just and reasonable” standard of review rather than the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* Doctrine).
- M. Title and Risk of Loss. Title to and risk of loss related to the Full Requirements Electric Service to be provided hereunder shall transfer from Empire to Customer at the Points of Delivery. Empire warrants that it will deliver the Full Requirements Electric Service to Customer free and clear of all Claims or any interest therein or thereto by any person arising prior to the point at the Points of Delivery. Customer acknowledges that it has title to and



assumes the risk of loss related to Customer's Resources which serve Customer's Load.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

III, Service Rates and Charges, 0.0.0 A

### **III. SERVICE RATES AND CHARGES**

- A. Customer Demand Charge. The Customer Demand Charge shall be determined by the GFR included on Attachment D to this Rate Schedule.
- B. Customer Energy Charge. The Customer Energy Charge shall be determined by the GFR included on Attachment D to this Rate Schedule.
- C. Rate Changes. The Customer Demand Charge and Customer Net Variable Charge components of the Customer Energy Charge of this rate schedule shall be determined annually pursuant to the GFR included in Attachment D to this Rate Schedule. These rates shall be in effect for the Contract Year following the calendar year on which said rates are based and billed to customer monthly. The Fuel and Purchased Power component of the Customer Energy Charge shall also be determined and billed monthly according to the procedure set forth in the Customer Energy Charge section of Attachment D to this Rate Schedule.
- D. Other Charges. All charges for transmission, ancillary, and wholesale distribution service, and charges imposed by NERC shall be passed on to Customer as outlined in Attachment D, Item 1 of this Rate Schedule. All

taxes, or similar governmental charges, imposed on Empire by federal, state and local governmental agencies authorized to impose taxes and/or charges on Empire, for delivery of Customer's Full Requirements Electric Service shall also be passed on to Customer as outlined in Attachment D, Item 1 of this Rate Schedule.

- E. Stated Items. Certain items specified in Article I.4 of Attachment E (Protocols) to this Rate Schedule can only be changed by a Section 205 or 206 filing. Nothing herein is intended to preclude FERC from reviewing this Rate Schedule or the Agreement, including, but not limited to, the attachments, exhibits, and Annual Update, on its own initiative under the just and reasonable standard.

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Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

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11/15/2010

IV, Responsibility for Transmission, Ancillary and Wholesale, 0.0.0 A

**IV. RESPONSIBILITY FOR TRANSMISSION, ANCILLARY AND WHOLESALE DISTRIBUTION SERVICES.**

- A. Customer is responsible for arranging and paying for all required transmission and ancillary services as well as any wholesale distribution services to deliver the Full Requirements Electric Service from the Points of Delivery to the Point(s) of Receipt. The Agreement does not provide any such services and the costs of such services will not be included in the GFR, and Customer shall not claim that the Generation Resources and Customer Resources under the

Agreement include any such services.

- B. Should Customer fall under the jurisdiction of NERC, Customer will be responsible for all filings, registrations and reporting required by NERC, and shall be responsible for any fees, fines or penalties or sanctions assessed to Empire due to Customer's failure to comply with NERC standards. Empire will not charge Customer for any fees, fines, penalties or sanctions assessed to Empire because of Empire's failure to comply with NERC standards.

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V, Planning, 0.0.0 A

## V. PLANNING

- A. Annual Meeting. Empire and Customer agree to meet at least once each Contract Year to discuss Customer's anticipated load growth for its Load and Empire's plans to serve Customer under the Agreement, including such load growth.
- B. Forecast. Customer shall set forth on Exhibit A to the Agreement its good faith load forecast of its highest annual peak demand and the Point(s) of Receipt's approximate voltage. By October 1 of each Contract Year, Customer shall update the load forecast set forth on Exhibit A to the Agreement for the ten-year period beginning with the subsequent Contract Year and advise Empire of any Point(s) of Receipt that Customer anticipates adding or deleting during such ten-year period. In coordination with the Transmission Provider, if

necessary, and subject to the execution of any necessary agreements, the Parties will mutually agree in writing, which agreement will not be unreasonably withheld, to add or delete Point(s) of Receipt and make other appropriate changes regarding Point(s) of Receipt. Whenever there is any such change in Point(s) of Receipt, Exhibit A to the Agreement shall be amended to reflect such change.

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VI, Renewable Energy Portfolio Provision, 0.0.0A

## **VI. RENEWABLE ENERGY PORTFOLIO PROVISION**

In the event that federal or state statutes require Customer to acquire or use renewable resources to serve its Load, then Customer shall provide written notice to Empire of such requirement and Empire shall notify Customer as to the amount of renewable resources inherent in Generation Resources that are attributed to Customer. If the federal or state requirement is in excess of the amount of renewable resources in Generation Resources that are attributed pro rata to Customer, the Parties shall meet to discuss any amendments to the Agreement or this Rate Schedule that are necessary, including the appropriate level of credits or offsets to reflect Customer's acquisition or use of renewable resources to serve its Load.

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VII, No Anticompetitive Effects, 0.0.0 A

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Order Date:

## **VII. NO ANTICOMPETITIVE EFFECTS**

The Parties agree that, so long as Customer's monthly bill is calculated in accordance with this Rate Schedule and rates hereunder continue to be based on Empire's embedded-cost-based formula rate and average system energy costs, neither Party shall allege in any FERC proceeding that any of the rates charged hereunder result in price discrimination or anticompetitive effects.

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VIII, Creditworthiness, 0.0.0 A

Status: Effective  
Order Date:

## **VIII. CREDITWORTHINESS**

- A. Financial Information. If requested by Empire, the Customer shall deliver to Empire within 30 days following the finalization and filing of the Customer's annual report containing audited consolidated financial statements, copies of such financial statements for the fiscal year with respect to the Customer, or such other financial documents of the Customer mutually acceptable to the Parties. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with the governing laws of the State of Kansas; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the Customer diligently

pursues the preparation, certification and delivery of the requested statements.

B. Credit Assurances.

- i. If at any time Empire has reasonable grounds to believe that the Customer's creditworthiness or performance under the Agreement has suffered a material adverse change, the Empire may provide the Customer with written notice indicating with specificity the reasonable grounds for its belief and requesting Performance Assurance in an amount determined by the Empire in a commercially reasonable manner.
- ii. Upon receipt of such notice, the Customer shall have ten (10) Business Days to address the perceived grounds and to propose an agreement on steps to remove or remedy the material adverse change to Customer's creditworthiness or performance. If agreement cannot be reached after such consultation, the Empire may require the Customer to remedy the situation by providing such Performance Assurance to the Empire within twenty (20) Business Days (or such other date as mutually agreed to by the Parties in writing); provided, however, that by so providing the Performance Assurance, the Customer is not waiving its right to challenge the propriety of the Empire's actions hereunder.
- iii. In the event that the Customer fails to provide such Performance Assurance or other credit assurance acceptable to the Empire within the time frame provided in Subsection ii above, then an

Event of Default under Article XII shall be deemed to have occurred.

- iv. Not more than once a month, Empire may inquire as to whether the Customer's creditworthiness or performance has returned to a level where a material adverse change no longer exists and Empire should therefore return the Performance Assurance to Customer. If the basis for the material adverse change no longer exists or if, in Empire's reasonable and good faith judgment, Performance Assurance is no longer necessary, Customer's obligation to provide Performance Assurance to Empire will cease and Empire will promptly return any unused Performance Assurance with interest pursuant to Section D of this Article.

C. Grant of Security Interest/Remedies.

- i. To secure its obligations under the Agreement and to the extent Customer delivers Performance Assurance hereunder, Customer hereby grants to Empire a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral posted as Performance Assurance by Customer and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Empire, and Customer agrees to take such action as the Empire reasonably requires in order to perfect Empire's first-priority security interest in, and lien on (and right of setoff against), such collateral and any

and all proceeds resulting therefrom or from the liquidation thereof.

- ii. Upon or any time after the occurrence or deemed occurrence of an Event of Default and during the continuation of an Event of Default, an Early Termination Date, or a failure by Customer to make any payment pursuant to the Agreement when due, Empire may, subject to the provisions of Article XII of this Rate Schedule, do any one or more of the following:
  1. Exercise any of the rights and remedies of Empire with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
  2. Exercise its rights of setoff against any and all obligations of Empire to Customer or its agent;
  3. Draw on any outstanding Letter of Credit issued for its benefit; and
  4. Liquidate any or all Performance Assurance then held by or for the benefit of Empire free from any claim or right of any nature whatsoever of Customer, including any equity or right of purchase or redemption by Customer.
- iii. Empire shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Customer's obligations under the Agreement (Customer remaining liable for any amounts owing to Empire after such application), subject to



Empire's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

D. Interest Rate on Cash Amounts Held as Collateral.

For Performance Assurance in the form of cash that is held by Empire pursuant to this Article, the Interest Rate shall be calculated commencing on the date Performance Assurance in the form of cash is received by Empire but excluding the earlier of: (i) the date Performance Assurance in the form of cash is returned to Customer; or (ii) the date Performance Assurance in the form of cash is applied to Customer's obligations pursuant to Section C of this Article.

E. Transfer of Interest Amount.

Customer shall invoice Empire monthly, setting forth the calculation of the interest amount due, and Empire shall make payment thereof by the later of (i) the third Business Day of the first month after the last month to which such invoice relates or (ii) the third Business Day after the day on which such invoice is received.

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Electric TCS and MBR

The Empire District Electric Company

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11/15/2010

IX, Liability, Indemnification and Relationship of Parties, 0.0.0 A

**IX. LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES**

A. Limitation on Consequential, Incidental and Indirect Damages.

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER

CUSTOMER NOR EMPIRE, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, NOR EMPLOYEES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE MEMBERS, PARENTS, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THE AGREEMENT, THIS RATE SCHEDULE, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THE AGREEMENT OR THIS RATE SCHEDULE, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, UNDER ANY INDEMNITY PROVISION OR ANY OTHER THEORY OF RECOVERY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY,

AND SUCH DIRECT DAMAGES SHALL BE THE SOLE AND EXCLUSIVE MEASURE OF DAMAGES AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS ARTICLE SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THE AGREEMENT AND THIS RATE SCHEDULE.

B. Indemnification.

- i. Each Party shall indemnify, defend and hold harmless each other Party from and against any Claims arising from or out of any event, circumstance, act or incident occurring or existing during the period when control and title to the Full Requirements Electric Service is vested in such Party as provided in Section II.M of this Rate Schedule.
- ii. Each Party shall indemnify and hold harmless the other Party from and against any and all legal and other expenses, Claims, costs, losses, suits or judgments for damages to any person or destruction of any property arising in any manner directly or indirectly by reason of the acts of such Party's authorized representatives while on the premises of the other Party under any rights of access provided herein.
- iii. Customer shall indemnify and hold harmless Empire from and against any and all legal and other expenses, Claims, costs, losses,

suits or judgments for damages to any individual, firm or corporation constituting any part of Customer's Load arising in any manner directly or indirectly by reason of a failure, interruption, curtailment, or deficiency in Empire's supply of Full Requirements Electric Service that did not result from the negligence or willful misconduct of Empire.

- iv. Neither Empire nor Customer assumes any responsibility of any kind with respect to the construction, maintenance, or operation of the system or other property owned or used by the other Party.
- v. If a Party intends to seek indemnification under this Article from the other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within thirty (30) days of the commencement of, or actual knowledge of, such Claim. Such Party from which indemnification is sought shall have the right, at its sole cost and expense, to participate in the defense of any such Claim. The Party seeking indemnification shall not compromise or settle any such Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
X, Confidentiality, 0.0.0 A

Status: Effective  
Order Date:

**X. CONFIDENTIALITY**

- A. Events of Disclosure. To the extent permitted by law, all Confidential Information shall be held and treated by the Parties and their agents and consultants, in confidence, used solely in connection with the Agreement and this Rate Schedule, and shall not, except as hereinafter provided, be disclosed without the other Party's prior written consent. Notwithstanding the foregoing, Confidential Information may be disclosed by a Party (the "Disclosing Party") (i) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Full Requirements Electric Service to be delivered pursuant to the Agreement; (ii) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order; (iii) as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction; and (iv) to third parties in connection with merger, acquisition/disposition and financing transactions provided that any such third party shall have signed a confidentiality agreement with the Disclosing Party containing customary terms and conditions that protect against the disclosure of the Confidential Information and that strictly limits the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance.
- B. Prompt Notice. In the event that Disclosing Party is requested or required to disclose any Confidential Information pursuant to Section A of this Article, the Disclosing Party shall provide the other Party with prompt

written notice of any such request or requirement, so that the other Party may seek an appropriate protective order, other confidentiality arrangement(s) or waive compliance with the provisions of this Article. If, failing the entry of a protective order, other confidentiality arrangement(s) or the receipt of a waiver hereunder, the Disclosing Party, in the written opinion of Disclosing Party's legal counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's legal counsel advises that the Disclosing Party is compelled to disclose.

- C. Hold Harmless. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition to the foregoing, the Disclosing Party shall indemnify, defend and hold harmless the other Party from and against any Claims, threatened or filed, and any losses, damages, expenses, attorneys' fees or court costs incurred by such Party in connection with or arising directly or indirectly from or out of the Disclosing Party's disclosure of the Confidential Information to third parties except as permitted above.
- D. Transmission Provider Communication. Notwithstanding the above provisions, either Party shall be permitted to communicate to the Transmission Provider any necessary information, including Confidential Information, with regard to implementation of the Agreement, and will make all reasonable efforts to ensure that Confidential Information

remains confidential.

The Empire District Electric Company as of 11/15/2010

Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

XI, Force Majeure, 0.0.0 A

## **XI. FORCE MAJEURE**

- A. Excuse from Performance. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations with respect to the Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure during the period of the Force Majeure.
- B. Events Excluded. Force Majeure will not be based on (i) the loss or gain of any Load by Customer; (ii) Customer’s inability economically to use the Full Requirements Electric Service contracted for herein; (iii) the loss or failure of Empire’s Generation Resources; or (iv) Empire’s ability to economically benefit itself, such as by selling the power required to meet its Full Requirements Electric Service obligations hereunder on more

favorable terms and conditions, or at a price greater, than set forth herein.

- C. Transmission Provider Curtailment. The Parties understand and agree that Empire may raise a claim of Force Majeure, on its and/or Customer's behalf, based in whole or in part on curtailment by the Transmission Provider, but only to the extent that such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR  
The Empire District Electric Company  
Effective Date: 09/17/2010  
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FERC Order: Delegated  
11/15/2010  
XII, Default and Remedies, 0.0.0 A

Status: Effective  
Order Date:

## **XII. DEFAULT AND REMEDIES**

- A. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder with respect to either Party or the specified Party ("the Defaulting Party").
- i. The failure to make any payment required pursuant to the Agreement when due (other than payments disputed under Article II, Section B of this Rate Schedule) if such failure is not remedied within ten (10) Business Days after written notice;
  - ii. Any representation or warranty made by a Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure is not remedied within sixty (60) days after written notice;



- iii. The failure by Customer to provide Performance Assurance as required under Article VIII of this Rate Schedule;
- iv. The failure to perform any material covenant or obligation set forth in the Agreement (except to the extent constituting a separate Event of Default as specified above, and except to the extent such Party's obligations to deliver or receive Firm Energy are modified by the provisions of this Rate Schedule), if such failure is not remedied within sixty (60) days after receipt of written notice;
- v. Such Party (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (b) makes an assignment or any general arrangement for the benefit of creditors; (c) otherwise becomes bankrupt or insolvent (however evidenced); (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it of any substantial portion of its property or assets; or (e) is generally unable to pay its debts as they fall due;
- vi. Such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under the Agreement to

which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

or

- vii. Customer's electric utility experiences the occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the amount specified in Article VII, Section 7 of the Agreement, which results in such indebtedness becoming immediately due and payable.

- B. Declaration of an Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right, upon written notice to the Defaulting Party (i) to designate a day, no earlier than thirty (30) days and no later than sixty (60) days after such notice is effective, as an Early Termination Date; (ii) to withhold any payments due to the Defaulting Party under the Agreement; and (iii) to suspend performance; provided, however, in case of subparagraph b) or d) above, that if the Defaulting Party within thirty (30) days of the date of such notice initiates legal proceedings to contest whether an Event of Default has occurred, performance may not be suspended nor the Agreement terminated prior to the resolution of the legal proceedings in a final, non-appealable order.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

11/15/2010

XIII, Miscellaneous, 0.0.0 A

Status: Effective

Order Date:

### **XIII. MISCELLANEOUS**

- A. Governing Law and Jury Trials. The Agreement and the rights and duties of the Parties thereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Kansas, without regard to principles of conflicts of law. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with the Agreement.
- B. Waivers. The failure of a Party to insist in any instance upon strict performance of any of the provisions of the Agreement or to take advantage of any of its rights under the Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of such Party.
- C. Survival. The provisions of Article II, IX, X, and XII hereof and any other Article or Exhibit to the Agreement that specifies by its terms that it survives termination, shall survive the termination or expiration of the Agreement. In addition, the applicable provisions of the Agreement shall continue in effect and survive the termination or expiration of the Agreement to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing or other disputes or

realization of any final payments or obligations arising from acts or events that occurred in connection with the Agreement during the Term.

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Attachment A, Form of Full Electric Requirements, 0.0.0 A

### Full Requirements Electric Service Agreement for Municipalities

This Full Requirement Electric Service Agreement for Municipalities (“Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_ (“Execution Date”), by and between The Empire District Electric Company (“Empire”), a Kansas corporation, and the city of \_\_\_\_\_, \_\_\_\_\_ (“Customer”), a municipality (each a “Party” and collectively the “Parties”).

In consideration of the mutual agreements herein contained, and of the mutual benefits to be derived here from, both Parties hereto agree as follows:

#### Article I General Agreement

1. Defined Terms. Unless otherwise noted herein, capitalized terms defined in the Rate Schedule shall have their same meaning in this Agreement.

2. Full Requirements Electric Service. In accordance with this Agreement and subject to the terms, conditions, and rates set forth in the Rate Schedule then in effect and which are incorporated herein by reference, Empire shall sell to Customer, and Customer shall purchase from Empire, capacity and Firm Energy

sufficient to meet all of Customer's capacity and Firm Energy needs for its Load, less those needs supplied by Customer Resources as provided under this Agreement.

3. Point(s) of Receipt. Customer shall provide a good faith load forecast of its highest annual peak demand and the Point(s) of Receipt's approximate voltage are designated on Exhibit A to this Agreement.

## Article II Scheduling of Customer's Resources

If applicable, Customer shall designate, in Exhibit B to this Agreement, as such exhibit may change from time to time, the entity responsible for scheduling Customer Resources. The designated entity shall coordinate energy schedules for the Customer Resources with Empire.

## Article III Term and Effective Date

1. Term. The Term of this Agreement shall begin on the Effective Date (as stated below) and shall end on the last day of the \_\_\_\_\_ full Contract Year ("Term") with a minimum ten-year term.

2. Effective Date. This Agreement shall become effective the first day of the first month following Customer's acquisition of all applicable transmission rights from the Transmission Provider.

3. No right to terminate. Neither Party has the right to terminate this Agreement prior to the expiration of the Term without the prior written consent of

the other Party unless pursuant to the provisions for termination in Article XII of the Rate Schedule.

4. Superseding Agreement. This Agreement shall supersede any and all prior agreements, either written or oral, between the Parties hereto for the service herein.

5. Obligation at Termination. Upon the termination of this Agreement, in addition to such rights and obligations enumerated elsewhere in this Agreement, the grant of any and all right and interest to Empire to supply the Full Requirements Electric Service shall cease.

#### Article IV Standard of Review

The Parties agree that the provisions of this Agreement are subject to change by FERC, and that Empire and Customer shall be entitled, at any time and from time to time, unilaterally and in the sole discretion of each, to apply for or to take other action to request such a change under Sections 205 or 206 of the Federal Power Act ("FPA"), respectively, and pursuant to the rules and regulations promulgated thereunder (Sections 205 or 206) or any other change that is required or allowed by any legal, regulatory, statutory or other governing authority. The standard of review FERC shall apply when acting on such proposed changes shall be the "just and reasonable" standard of review rather than the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.* 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra Doctrine*).

Article V  
Notices

Any notice or demand required by this Agreement shall be deemed properly given to Empire if sent by registered or certified mail and addressed to:

Regular Mail:       The Empire District Electric Company  
                          Attn: VP - Energy Supply  
                          PO Box 127  
                          Joplin, MO 64802

Overnight Delivery: The Empire District Electric Company  
                          Attn: VP - Energy Supply  
                          602 S. Joplin Avenue  
                          Joplin, MO 64801

Any notice or demand required by this Agreement shall be deemed properly given to Customer if sent by registered or certified mail and address to:

Regular Mail:       \_\_\_\_\_

                          \_\_\_\_\_

                          \_\_\_\_\_

Overnight Delivery: \_\_\_\_\_

                          \_\_\_\_\_

                          \_\_\_\_\_

The foregoing designations of the name or address to which notice or demands are to be directed may be changed at any time, and from time to time, by written notice given by either Party to the other Party. Any notice or request of

a routine character in connection with the delivery of Full Requirements Electric Service or in connection with the operation of facilities shall be given in such manner as the authorized representatives of the Parties from time to time shall arrange.



Article VI  
Representations and Warranties

1. Empire and Customer Representations and Warranties. Empire and Customer represent and warrant to the other that:

- A. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- B. It has, or will upon execution of this Agreement promptly seek, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- C. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, including, but not limited to, any organizational documents, charters, by-laws, indentures, mortgages or any other contracts or documents to which it is a party, or any law, rule, regulation, order or the like applicable to it;
- D. This Agreement, and each other document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
- E. It shall perform its obligations hereunder in accordance with applicable law, rules and regulations. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the

United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation , or any order, judgment or decree of any court or governmental authority of competent jurisdiction;

- F. It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it, which would result in it being or becoming insolvent or bankrupt;
- G. There are no pending or, to its knowledge, threatened against it any legal proceedings that could materially and/or adversely affect its ability to perform it's obligations under this Agreement;
- H. As of the Execution Date, Empire acknowledges that Customer is a creditworthy counterparty and that there is no currently existing material adverse change that would require Customer to post Performance Assurance as of the Execution Date; and
- I. In the event that, during the term of this Agreement, retail customers of the Customer obtain the ability to choose electric suppliers, the Parties will negotiate, in good faith, any amendments to this Agreement needed to accommodate the new statutory or regulatory scheme that results in such customer choice. In the event that the Parties are unable to agree upon the necessary amendments to this Agreement, either Party may seek dispute resolution at FERC.

2. Empire Representations and Warranties. Empire represents and warrants

to Customer that Empire has sufficient Generation Resources in place or planned to meet its supply obligations under this Agreement.

3. Customer Representations and Warranties. Customer represents and warrants to Empire that Customer has established and will maintain rates for electric service Customer provides to Customer's retail consumers which shall provide to Customer revenues at least sufficient, together with other available funds, to meet its obligations to Empire under this Agreement, to pay operation and maintenance expenses of its electric system, to pay all obligations, whether now outstanding or incurred in the future, payable from, or constituting a charge or lien on, the revenues of its electric system; and to make any other payments required by law.

## Article VII Miscellaneous

1. Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

2. Headings and References. Article and section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement. Any reference to an article, section, exhibit or attachment shall be deemed a reference to an article, section, exhibit or attachment of this Agreement unless otherwise specified.

3. Operation Capacity and Energy Parameters. Customer shall set forth any

Customer Resources' operational capacity and Energy parameters for the initial Contract Year on Exhibit B to the Agreement. For each Contract Year subsequent to the initial Contract Year, Customer, by January 1 of the Contract Year, shall update Exhibit B to the Agreement with the Customer Resources capacity of Energy parameters for the next Contract Year.

4. Assignment.

- A. Consent Required. This Agreement shall be binding upon and inure to the benefit of the permitted successors and permitted assigns of the Parties, except that this Agreement may not be assigned by either Party unless prior consent to such assignment is given in writing by the other Party. Any assignment made without a consent required hereunder shall be void and of no force or effect as against the non-consenting Party. For purposes of this Assignment Section, the Customer and Empire each hereby acknowledges and consents to the present assignment of an interest in this Agreement by Empire pursuant to any Empire mortgage, indenture, security agreement or other contract or agreement securing the indebtedness of Empire and by the Customer pursuant to any mortgage, indenture, security agreement or other contract or agreement securing the indebtedness of the Customer (the "Customer Mortgage").
- B. No Discharge. No sale, assignment, transfer or other

disposition of this Agreement permitted by this Agreement shall release or discharge the assigning Party from or otherwise affect its rights or obligations under this Agreement.

- C. Assignment for Security. Notwithstanding any other provision of this Agreement, a Party, without the other Party's consent, may assign, transfer, mortgage or pledge its interest in this Agreement as security (an "Assignment for Security") for any obligation secured by any indenture, mortgage or similar lien on its system assets without limitation on the right of the secured Party to further assign this Agreement, including, without limitation, the assignment by the Customer to create a security interest for the benefit of any third party.
- D. Subsequent Assignment. After any Assignment for Security to another secured party, the other secured party, without the approval of the other Party to this Agreement, may, if the Party who made the Assignment for Security is in default of its obligations to other secured party that is secured by such security interest (or if other secured party is otherwise entitled to foreclose on this Agreement pursuant to the terms of its assignment), (i) cause this Agreement to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such Assignment for Security, or (ii) if other secured party first acquires this Agreement, sell, assign,

transfer or otherwise dispose of this Agreement to a third party. The Customer and Empire each hereby waives any and all defenses to such sale or assignment and agrees to continue to be bound by and perform their respective obligations hereunder as if such purchaser or assignee were an original party hereto.

E. Corporate Reorganization.

1. The Customer, without Empire's prior written consent (and without relieving itself from liability hereunder), may assign any or all of its rights and delegate any or all of its duties under this Agreement in connection with any reorganization, merger or consolidation of the Customer with another individual, partnership, limited liability company or partnership, corporation, business trust, joint stock company, cooperative, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature (a "Person") if the Customer is not the surviving entity, if the surviving Person shall expressly assume, by written agreement executed and delivered to Empire, the performance and observance of the provisions of this Agreement required to be performed or observed by the Customer.
2. Empire may, without Customer's prior written consent

(and without relieving itself from liability hereunder), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, or (b) transfer or assign this Agreement to any Person or entity succeeding by merger or by acquisition to all or substantially all of the assets of Empire, where such Person's or entity's creditworthiness is equal to or higher than that of Empire; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof.

5. Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party hereto.
6. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable subsequent to the Effective Date, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonable and necessary in order to give effect to the original intention of the Parties.
7. Cross Default Amount. The default amount applicable to

Customer pursuant to Article XII.A.vii., Events of Default, of the Rate Schedule shall be the net present value of Customer Demand Charges for the remaining term of the Agreement. IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized the day and year first above written.

The Empire District Electric Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

The city of \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

List of Delivery Points and Good Faith Load Forecast for  
Contract Year Beginning \_\_\_\_\_

**Exhibit B**

**CUSTOMER RESOURCES**

Delivery Schedule for  
Contract Year Beginning \_\_\_\_\_

	Source Balancing	Capacity	Energy
Scheduling			
<u>Agency</u>	<u>Area</u> _____	<u>Amount (MW)</u>	<u>Schedule (MWH)</u>
<u>Entity</u>	_____		



**Exhibit C**

Arrangement for Transmission, Ancillary and Wholesale Distribution Services

By signing below, Customer is requesting Empire to act on Customer's behalf to arrange for network transmission, ancillary and wholesale distribution services to deliver capacity and Firm Energy under the Agreement of which this Exhibit C is a part.

In the event that Customer obtains Customer Resources, title to which Empire is prohibited from taking, Customer shall notify Empire in writing that it requests Empire to either (1) reassign the existing network service agreement from the Transmission Provider directly to Customer or its agent, or (2) obtain point-to-point transmission service in addition to the network transmission already secured for Customer.

Customer shall pay Empire all transmission costs Empire incurs in arranging transmission, ancillary and wholesale distribution services or other services required by the Transmission Provider for delivering the capacity and Firm Energy to Customer.

Customer understands that Empire will submit a request to the Transmission Provider for transmission service sought by the Customer, but in no way represents, warrants or guarantees any transmission service will be available to Customer. The transmission service that is available to meet Customer's request will solely be determined by the Transmission Provider.

The Empire District Electric Company

By: \_\_\_\_\_

Title: \_\_\_\_\_

The city of \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

FERC Order: Delegated  
11/15/2010  
Attachment B, [OMITTED], 0.0.0 A

Order Date:

**Attachment B**  
**(Reserved for Future Use)**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Attachment C, [OMITTED], 0.0.0 A

Status: Effective

Order Date:

**Attachment C**  
**(Reserved for Future Use)**

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010  
FERC Docket: ER10-02738-000 3  
FERC Order: Delegated  
11/15/2010  
Attachment D, GFR Template, 0.0.0 A

Status: Effective

Order Date:

The Empire District Electric Company as of 11/15/2010  
Electric TCS and MBR

The Empire District Electric Company

Effective Date: 09/17/2010

Status:

Effective

FERC Docket: ER10-02738-000 3

FERC Order: Delegated

Order Date:

11/15/2010

Attachment E, Protocols, 0.0.0 A

## **Customer Demand Charge and Customer Net Variable Charge Protocols**

### **I. Annual Update**

Empire's annual recalculation of the Customer Demand Charge and Customer Net Variable Charge in accordance with the GFR Template set forth in Attachment D of this Rate Schedule shall be subject to review only in accordance with the procedures set forth in these Protocols.

1. On or about May 15 of each year, Empire shall recalculate the Customer Demand Charge and the Net Variable Charge thereby producing the "Annual Update" for the upcoming Contract Year in accordance with the GFR as set forth in Attachment D of this Rate Schedule, supported by the FERC Form No. 1 and worksheets referenced therein, and the procedures contained in this Attachment E. Empire shall provide Customer notice of the Annual Update via electronic mail. The date on which Empire transmits the Annual Update shall be that year's "Publication Date." Empire will on the Publication

Date make available to Customer and/or a consultant designated by Customer a fully-functioning Excel file containing the Customer Demand Charge and Net Variable Charge calculations for the Contract Year. Empire's Load and Capability Report will be provided as part of the Annual Update.

2. Empire shall calculate the difference between the revenues collected from the Customer for service during the Contract Year with Empire's Actual Customer Demand Charge and Customer Energy Charge annual total ("True-Up Adjustment") for that calendar year. To the extent that revenue collected from the Customer for service during the calendar year is less than Empire's Actual Customer Demand Charge and Customer Energy Charge annual total for that calendar year, the difference, plus interest computed in accordance with 18 C.F.R. § 38.19a, shall be used to increase the Customer Demand Charge and Customer Energy Charge, as relevant, for the subsequent Contract Year. To the extent that revenue collected from the Customer for service during the calendar year is greater than Empire's Actual Customer Demand Charge and Customer Energy Charge annual total for that calendar year, the difference, plus interest computed in accordance with 18 C.F.R. § 38.19a, shall be used to decrease the Customer Demand Charge and Customer Energy Charge for the subsequent Contract Year.

2. The Annual Update for the Contract Year shall not seek to modify the GFR template formulas and shall not be subject to challenge for purposes of seeking to modify the Customer Demand Charge and Net Variable Charge (*i.e.*, all such modifications to the GFR template formulas will require, as applicable, a FPA Section 205 or Section 206 filing as provided in Section II.L of the Rate Schedule).

3. The rate of return on equity for common stock, PBOPs and depreciation rates set

forth in Attachment D shall not change absent, as applicable, a FPA Section 205 or 206 filing with FERC.

4. Corrections of mistakes in Empire's FERC Form No. 1 and specific data applied in the GFR, and any resulting refunds or surcharges, shall be reflected in the Annual Update for the next effective Contract Year, with interest determined in accordance with 18 C.F.R. § 35.19a. *See* Worksheet X of the GFR template. "Mistake" shall mean errors or omissions regarding the values inputted into the GFR template, such as, but not limited to, arithmetic and other inadvertent computational errors, erroneous Form No. 1 references or the like. Mistakes shall not include matters involving exercise of judgment or substantive differences of opinion regarding the derivation of an input that is more properly the subject of the annual review process. The Parties agree that corrections to erroneous FERC Form No. 1 references in the GFR template may be made in the Annual Update without a Section 205 or 206 filing. There is no deadline for either Customer or Empire to notify each other of any mistake in any FERC Form No. 1 data or specific data applied in the GFR.

## **II. Review of Annual Update**

Each Annual Update for purposes of Sections II and III of this Attachment E (Protocols), shall be subject to the following review procedures ("Annual Review Procedures"):

1. Customer shall have seventy-five (75) days from the Publication Date to serve reasonable information requests on Empire. Such information requests shall be limited to what is necessary to determine if Empire has properly calculated the Annual Update under review and may include any documents that are the source for inputs into the GFR

template. Such information requests shall not include requests for information related to Annual Updates for prior years except (i) to determine whether a prior year's approach on a given matter was the same or different from the current year's approach; or (ii) in connection with corrections pursuant to Section I.4 of this Attachment E.

2. Empire shall make a good faith effort to respond to information requests pertaining to the Annual Update within fifteen (15) business days of receiving such requests. Information requests received after 4 p.m. CPT shall be considered received the next business day.

3. To the extent Empire and Customer are unable to resolve disputes related to information requests submitted in accordance with these Annual Review Procedures, Empire or Customer may petition FERC to appoint an Administrative Law Judge as a discovery master. The discovery master shall have the power to issue binding orders to resolve discovery disputes and compel the production of discovery, as appropriate, in accordance with the Annual Review Procedures and consistent with FERC's discovery rules. Customer shall have until the later of: (i) ninety (90) days from the Publication Date or (ii) fifteen (15) days after Empire's last response to reasonable information requests submitted pursuant to Section II.1 above ("Notice Date"), to review the calculation of the Annual Update and to notify Empire in writing of any specific challenges to the Annual Update ("Issues"). Challenges to the GFR template formulas themselves shall not be considered "Issues" for purposes of these Annual Review Procedures.

### **III. Resolution of Challenges**

For each Annual Update:

1. If Empire and Customer have not resolved all Issues identified pursuant to Section II.3 above within thirty (30) days from the Notice Date, senior management of Customer and Empire shall make a good faith effort to resolve any outstanding Issues (“Senior Management Review”).
2.
  - a. If Empire’s and Customer’s senior management are unable to resolve all Issues within fifty (50) days from the Notice Date, Customer may file a complaint pursuant to Section 206 of the FPA challenging the Annual Update (“Formal Challenge”). Challenges to the GFR template formulas themselves shall not be considered “Formal Challenges” for purposes of these Annual Review Procedures.
  - b. Customer may file a Formal Challenge for a limited period of up to sixty (60) days from the Notice Date. Customer may not file a Formal Challenge thereafter.
3. Each Annual Update shall become final and shall no longer be subject to challenge on the later to occur of: (i) passage of the sixty (60) day period set forth in Section III.2.b above for a Formal Challenge, if no such Formal Challenge has been filed and FERC has not initiated a proceeding to consider the Annual Update; or (ii) issuance by FERC of a Final Order in response to a Formal Challenge or a proceeding initiated by FERC to consider the Annual Update.
4. Any refunds or surcharges resulting from a Formal Challenge shall be calculated, with interest determined in accordance with 18 C.F.R. § 35.19a, from the effective date of the challenged Annual Update, and shall be reflected in the Annual Update for the next effective Contract Year.

