

UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

US Department of Energy

AUG 14 2015

Electricity Delivery and  
Energy Reliability

LION SHIELD ENERGY, LLC

Docket No. EA-415

APPLICATION OF LION SHIELD ENERGY, LLC  
FOR AUTHORIZATION TO TRANSMIT ELECTRICITY TO MEXICO

Lion Shield Energy, LLC ("Applicant") hereby files this application pursuant to 10 C.F.R. § 205.300, *et seq*, for authority to transmit electric energy from the United States to Mexico.

**I. DESCRIPTION OF APPLICANT AND BACKGROUND FOR REQUEST**

Applicant is a Texas limited liability company based in Houston, Texas, which expects to provide a wide spectrum of a lecture, and energy-related products and services to a diverse range of customers and Mexico. Applicant is not a franchised public utility with a transmission or distribution system, and does not have captive customers.

**II. INFORMATION REQUIRED PURSUANT TO 10 C.F.R SECTION § 205.302**

**a. Exact legal name of Applicant:**

Lion Shield Energy, LLC

**b. Exact legal name of all partners:**

Not applicable. Applicant is a limited liability company owned by:

Sergio Blanchet and Rene Adrian Villar Barajas

**c. Name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed:**

Sergio Blanchet  
President  
Lion Shield Energy, LLC  
1095 Evergreen Circle, Suite 200  
The Woodlands, TX 77380  
(832) 482-4605  
sblanchet@lionshieldenergy.com

- d. State of territory under the laws of which the Applicant is organized or incorporated, or authorized to operate. If the Applicant is authorized to operate in more than one state, all pertinent facts shall be included:**

Applicant is a Texas limited liability company, organized on 2015, and is currently authorized to operate in Texas.

- e. Name and address of any known Federal, State, or local government agency which may have any jurisdiction over the action to be taken in the application and a brief description of that authority:**

Pursuant to section 202(e) of the Federal Power Act, the Department's Office of Electricity Delivery and Energy Reliability is the sole agency with jurisdiction over the proposed export of electric energy to Mexico. No other known Federal, State or local government entity or agency has jurisdiction over the proposed exports described in this application.

- f. Description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities:**

Applicant seeks authorization to export electric energy to Mexico over the planned or existing authorized international electric transmission facilities listed in Exhibit C to this application. Applicant's request for authorization under this application qualifies for a categorical exclusion under the Department's regulations implementing the National Environmental Policy Act of 1969, inasmuch as Applicant's request for export authority is limited to the use of transmission facilities for which a Presidential Permit has been issued.

- g. Technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the Applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of the electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation:**

Applicant seeks authority to transmit electric power to Mexico as a power marketer for a period of five (5) years, or for such other period as the Department deems appropriate, effective from the date of the order granting this application. In previous orders, the

Department has endorsed a flexible approach for evaluating reliability issues associated with proposed export transactions. When considering applications from power marketers for export authorizations involving planned or existing international transmission facilities, the Department has relied on the technical analyses available for those facilities. Applicant submits that it is appropriate for the Department to apply the same standard with respect to this request.

As noted above, Applicant does not have its own system on which its exports of energy could have an impact with respect to electric supply. As such, Applicant's proposed exports would not impair the sufficiency of the electric supply on "its system," as Applicant does not own or operate an integrated transmission or distribution system. The electric energy that Applicant would export on a firm or interruptible basis would be surplus energy purchased in wholesale markets in bilateral, voluntary transactions. Moreover, any such energy would be surplus to the needs of the relevant system, and exportation of the energy would not impair the adequacy of electric power supply within the United States by adversely impacting native load customers or other market participants. Nor would the requested authorization impede or tend to impede regional coordination of electric utility planning or operation. Applicant's export transactions will be completed using the relevant procedures and/or market structures, as coordinated with all parties as required pursuant to the applicable market rules, as well as the reliability standards implemented by the North American Electric Reliability Corporation ("NERC"). Applicant further agrees to abide by the export limits contained in the relevant authorization of any transmission facility over which it exports energy to Mexico. Therefore, Applicant's export transactions will not compromise transmission system security or reliability.

- h. The original application shall be signed and verified under oath by an officer of the applicant having knowledge of the matters set forth therein:**

The verification is included in Attachment 1 to the application.

### III. EXHIBITS REQUIRED BY 10 C.F.R. § 205.303

In compliance with 10 C.F.R. § 205.303, the following Exhibits are attached to this application:

- a. **Exhibit A. A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.**

A copy of the proposed agreement is attached hereto as **Exhibit A**.

- b. **Exhibit B. A showing, including a signed opinion of counsel that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State Laws.**

Please see opinion of counsel attached hereto as **Exhibit B**.

- c. **Exhibit C. A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.**

The owner, location, voltage, and the Presidential Permits under which the relevant border transmission facilities are constructed and maintained is set forth in **Exhibit C**.

- d. **Exhibit D. If an applicant resides or has its principal office outside the United States, such an applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.**

Not applicable.

- e. **Exhibit E. A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the purchase, sale or transmission of electric energy.**

Not applicable. Applicant's sales are made at negotiated rates pursuant to the Market-Based Rate Tariff.

- f. **Exhibit F. An explanation of the methodology (Operating Procedures) to**

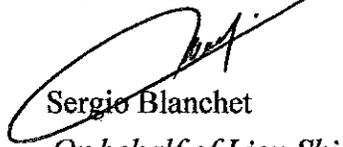
**inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before the delivering of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those materials required by this section, which have been filed previously with the ERA, may be incorporated by reference.**

Not applicable. Applicant is a power marketer, and is not a franchised public utility with captive customers. Any export of electric energy from the United States to Mexico by Applicant will be completed using all applicable procedures and/or market structures, and coordinated with relevant parties as required pursuant to the reliability standards and market rules as implemented by NERC and affected transmission operators.

#### **IV. CONCLUSION**

In consideration of the foregoing, Applicant respectfully requests approval of this application for authorization to export electrical energy to Mexico.

Respectfully submitted,



Sergio Blanchet

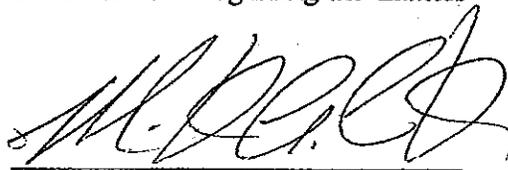
*On behalf of Lion Shield Energy, LLC*

**EXHIBIT B**

**LEGAL OPINION**

The following opinion is given in support of the foregoing application of Lion Shield Energy, LLC for Authorization to Transmit Electric Energy to Mexico.

- 1) I am an attorney at law, authorized to practice law in the State of Texas.
- 2) I am counsel to Lion Shield Energy, LLC, a duly incorporated and validly existing limited liability Company, which is in good standing under the laws of the State of Texas.
- 3) Lion Shield Energy, LLC has the corporate capacity to act in the manner described in the application.
- 4) To the best of my knowledge and belief, Lion Shield Energy, LLC has complied with or is in the process of complying with all Federal and State laws regarding the matters contemplated in the application.



MARK A. COUNTS  
ATTORNEY AT LAW

**EXHIBIT C**

**TRANSMISSION SYSTEM INFORMATION**

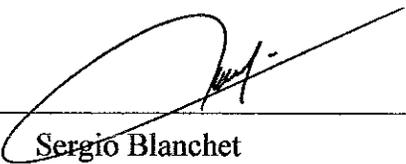
Lion Shield Energy, LLC requests authorization to export electric energy to Mexico over the following international transmission facilities, as identified by Presidential Permit number:

<b><u>Present Owner</u></b>	<b><u>Location and Voltage</u></b>	<b><u>Presidential Permit No.</u></b>
Comision Federal de Electricidad	Falcon Dam, TX 138kV	<i>N/A</i>
	Redford, TX 7.2kV	PP-51
	Presidio, TX 13.8kV	PP-03
AEP Texas Central Company	Brownsville, TX 138kV	PP-94
	Brownsville, TX 69kV	PP-94
	Laredo, TX 138kV	PP-317
	Laredo, TX 230kV	PP-317
	Eagle Pass, TX 138kV	PP-219
	Ascarate, TX 115kV	PP-48
El Paso Electric Company	Falcon Dam, TX	
Western Area Power Administration	Amistad Dam, TX	
Sharyland Utilities	McAllen, TX 138kV	PP-285

**Attachment 1**

**VERIFICATION**

The undersigned, being duly sworn, deposes and says that he is a Member and Manager of Lion Shield Energy, LLC ("Lion Shield"), and has the authority to verify the foregoing application on behalf of Lion Shield; he has read said application; and to the best of his knowledge, information, and belief, all of the statements contained therein with respect to Lion Shield are true and correct.

  
\_\_\_\_\_  
Sergio Blanchet  
*On behalf of Lion Shield Energy, LLC*

STATE OF TEXAS

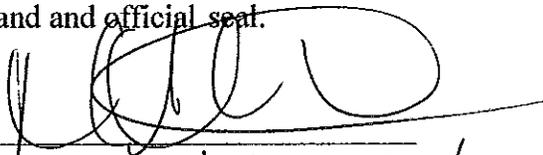
COUNTY OF HARRIS

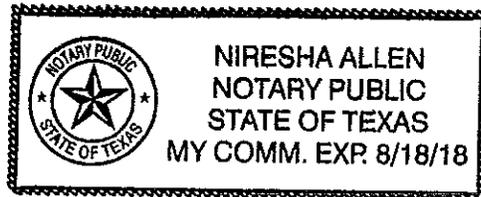
On August 11, 2015 before me, a licensed notary in the State of Texas, personally appeared **SERGIO BLANCHET** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_





MY Commission Expires on the 18 day of Oct 20118

BLOCK  
SERVICE AGREEMENT

BY AND AMONG

TOPAZ POWER HOLDINGS, LLC (SELLER)

AND

LION SHIELD ENERGY, LLC (BUYER)

THIS DRAFT DOCUMENT IS FOR NEGOTIATION PURPOSES ONLY AND DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS (INCLUDING WITHOUT LIMITATION FINAL CREDIT AND LEGAL APPROVAL). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DOCUMENT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DOCUMENT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE AGREEMENT IS NEGOTIATED AND SIGNED, NO PARTY SHALL HAVE ANY OTHER LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DOCUMENT OR IN THE COURSE OF NEGOTIATIONS

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**BLOCK SERVICE**  
**AGREEMENT**

This BLOCK SERVICE AGREEMENT is dated as of \_\_\_\_\_ 2015 ("Effective Date") and is by and between [Topaz Power Holdings, LLC] ("Company" or "Seller"), and Lion Shield Energy, LLC ("Customer" or "Buyer") (each individually a "Party," or collectively, the "Parties").

**RECITALS**

**WHEREAS**, Company has a principal place of business at 2901 Via Fortuna Drive, Building 6, Suite 650, Austin, Texas 78746 and is engaged in the business of selling electric energy on a wholesale basis; and

**WHEREAS**, Customer desires to purchase transmission contingent wholesale Energy within the US near the US/Mexico border so that Customer can make separate arrangements directly with Comision Federal de Electricidad ("CFE") for meeting Customer's Retail Load within Mexico; and

**WHEREAS**, Company has proposed to supply, subject to the terms and conditions set forth herein, transmission contingent wholesale Energy to the Delivery Point for Customer;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree that this Agreement, together with the Appendices attached hereto, sets forth the terms under which Company will supply Block Energy Service to Customer during the Delivery Period and provide related services, and constitutes the entire agreement among the Parties relating to the subject matter hereof and supersedes any other agreements, written or oral (including without limitation any preliminary term sheet), between the Parties

concerning this Agreement.

#### ARTICLE 1 - DEFINITIONS

The following words and terms shall be understood to have the following meanings when used in this Agreement or in any associated documents entered into in conjunction with this Agreement. This Agreement includes certain capitalized terms that are not explicitly defined herein. Such capitalized terms shall have the meanings specified in the ERCOT Protocols, as the same are in effect from time to time, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained herein and a definition contained in the ERCOT Protocols, the definition in this Agreement shall control for purposes of this Agreement. Certain other definitions as required appear in subsequent parts of this Agreement.

- 1.1 **Affiliate** means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.2 **Agreement** means this Block Service Agreement, including the Appendices, as amended, modified or supplemented from time to time.
- 1.3 **Ancillary Services** means the following services, to the extent such services are capable of being generated by, provided or made available by the Facility: those services set forth in the ERCOT Protocols and any supplemental or revised tariffs or schedules adopted by ERCOT, including but not limited to, Black Start Service, RMR Reserve Service, Equalization Adjustment, ERCOT System Administration, OOM Replacement Capacity, OOM Energy, Balancing Energy Neutrality, Replacement Reserve Uplift, Regulation Up, Regulation Down, Responsive Reserve and Non-Spin Reserve and any future Capacity obligation that ERCOT and/or CFE may require.
- 1.4 **Bankrupt** means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.
- 1.5 **Billing Period** means the calendar month which shall be the standard period for all payments and metering measurements under this Agreement, unless otherwise specifically required by ERCOT or the entity providing meter reading services. *[NTD: Discuss shorter Billing Periods]*
- 1.6 **Block Energy Service** means the quantity of MW of Transmission Contingent Firm Energy per hour to be delivered to the Delivery Point, with the deliveries to start as specified in each Confirmation.
- 1.7 **Business Day** means a day ending at 5:00 p.m. Eastern Prevailing Time, other than Saturday, Sunday and any day which is a legal holiday or day designated as a holiday by ERCOT or NERC.
- 1.8 **CFE** means the Comisión Federal de Electricidad of Mexico.
- 1.9 **Change-in-Law** means, after the Effective Date, the adoption, imposition, promulgation, change in interpretation or modification by any U.S. Governmental Authority of any law, regulation or Governmental Approval, or the issuance of a final and non-appealable order, judgment, award or decree of any U.S. Governmental Authority having the effect of the foregoing. *[NTD: Discuss relief, if any, for EUM Change-in-Law]*
- 1.10 **Claims** means 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 Agreement, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.
- 1.11 **Claiming Party** is defined in Section 8.3.
- x.xx **Confidential Information** means the terms of this Agreement, all other non-public information of a

sensitive commercial nature, and such other terms as the Parties agree shall remain confidential, and the Parties agree that Company's pricing terms (i.e. Energy Charges (including Appendix B), Term, Delivery Period and Block Energy Service as outlined in Article 3) are confidential and also treated as trade secrets by the Company. Notwithstanding the foregoing, the following shall not constitute Confidential Information:

- (a) Information which was already in a Party's possession prior to its receipt from another Party and not subject to a requirement of confidentiality;
  - (b) Information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to the other Party; and
  - (c) Information which is or becomes publicly available through no fault of the Party.
- 1.12 **Confirmation** means, with respect to a Transaction, a writing substantially in the form of Appendix A setting forth the terms of such Transaction.
- 1.xx **Control Area** means the geographic territory in which generation is balanced, as operated by ERCOT.
- 1.13 **Credit Rating** means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P and/or Moody's.
- 1.14 **Defaulting Party** means the Party who has caused an Event of Default.
- 1.15 **Delivery Period** means the period as defined in Section 2.2.
- 1.16 **Delivery Points** means the point(s) specified in Section 2.4.
- 1.17 **Early Termination Date** is defined in Section 7.2. *[NTD: Discuss termination for convenience]*
- 1.18 **Eastern Prevailing Time** means the prevailing time in New York City, USA (GM -5).
- 1.19 **Effective Date** has the meaning stated in the first sentence of this Agreement.
- 1.20 **Energy** means three phase, 60-cycle alternating current electric energy, expressed in megawatt hours.
- 1.21 **ERCOT** means the Electric Reliability Council of Texas, which is the independent system operator of the transmission grid in the ERCOT portions of Texas.
- 1.22 **ERCOT Protocols** means the document adopted by ERCOT, including any attachments or exhibits referenced in that document, as amended from time to time, that contains the scheduling, operating, planning, reliability, settlement and other policies, rules, guidelines, procedures, standards and criteria governing the operation of market participants and other entities in ERCOT. For the purposes of determining responsibilities and rights at a given time, the ERCOT Protocols, as amended in accordance with the change procedures described in the ERCOT Protocols, in effect at the time of the performance or non-performance of an action, shall govern with respect to that action.
- 1.xx **Event of Default** means those events by the Defaulting Party set forth in this Agreement which give the Non-Defaulting Party the right to terminate this Agreement or exercise other remedies available under this Agreement.
- 1.23 **Facility** means the power generation plant known as the Laredo Energy Center located in Laredo, Texas, and indirectly owned by Seller.
- 1.xx **FERC** means the Federal Energy Regulatory Commission.
- 1.24 **Firm Energy** means Energy that Company shall sell and deliver and Customer shall purchase and receive unless relieved of their respective obligations without liability by Force Majeure or ERCOT system

emergency or transmission conditions making delivery to the Delivery Point or receipt at the Delivery Point impossible, but only to the extent that, and for the period during which, the Party's performance is prevented thereby.

- 1.25 **Force Majeure** means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, provided further, that Company may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission & Distribution Service Provider for the Block Energy Service to be delivered to or received at the Delivery Point or where such curtailment is due to "force majeure" or "uncontrollable force" or a similar term is referenced under the Transmission & Distribution Service Provider's tariff;
- 1.26 **Governmental Approval** means any permit, authorization, registration, consent, action, waiver, exception, variance, order, judgment, decree, license, exemption, publication, filing, notice to, or declaration of or with, or required by any Governmental Authority or applicable law.
- 1.27 **Governmental Authority** means any federal, state, tribal, local, or municipal government body; and any governmental, regulatory, or administrative agency, commission, body, agency, instrumentality, or other authority exercising or entitled to exercise any executive, judicial, legislative, administrative, regulatory, or taxing authority or power, including any court or other tribunal.
- 1.28 **HE** means the hour ending at the time specified.
- 1.29 **Letter(s) of Credit** means one or more irrevocable, transferable standby revolving letters of credit issued by 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. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.
- 1.30 **Letter of Credit Default** means the occurrence of any of the following events in respect of a Letter of Credit:
- (a) the issuer of the Letter of Credit shall fail to maintain a Credit Rating of at least A- from S&P or A3 from Moody's or otherwise not qualify as a U.S. commercial bank or a foreign bank with a U.S. branch;
  - (b) the issuer of such Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit, including, without limitation, failing to honor a drawing under such Letter of Credit in accordance with its terms or the issuer shall disaffirm, disclaim, repudiate, or reject in whole or in part, or challenge the validity of, such Letter of Credit; or
  - (c) the issuer of such Letter of Credit shall become Bankrupt or such Letter of Credit shall expire or terminate or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement for an amount at least equal to the amount of the Letter of Credit being replaced twenty five (25) days prior to expiration or termination.
- 1.31 **Liquidated Gains** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Termination Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.
- 1.32 **Liquidated Losses** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Termination Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner.
- 1.33 **Load Serving Entity or LSE** means any entity (or the duly designated agent of such an entity), (i) serving end-users within ERCOT, and (ii) that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electric energy to end-users located within ERCOT.
- 1.34 **Losses** means any transmission loss, transformation loss, sub-transmission and/or distribution losses incurred in serving the Retail Load provided, however, that Losses shall only include losses incurred between the source of Energy and the Delivery Point. In no case shall Losses include losses that may be incurred from the Delivery Point to the ultimate retail customers.

- 1.35 **Market Rules and Procedures** means the market rules, manuals and procedures adopted by ERCOT, as may be amended from time to time, and as administered by ERCOT to govern operations within ERCOT.
- 1.36 **Metered Energy** means the Energy delivered by ERCOT to the Delivery Points as measured by meters and as reported by ERCOT at the Delivery Points.
- 1.37 **Monthly Payment** means the monthly charges set out in Article 4 of this Agreement. *[NTD: Discuss shorter Billing Periods]*
- 1.38 **Moody's** means Moody's Investors Service, Inc. and its successors.
- 1.39 **MW** means Megawatt.
- 1.40 **MWh** means Megawatt-hour.
- 1.41 **NERC** means the North American Electric Reliability Corporation.
- 1.42 **Non-Defaulting Party** means the Party that has not caused an Event of Default.
- 1.43 **Party(ies)** means Customer or Company or either or both of them, as the context requires.
- 1.44 **Performance Assurance** means collateral in the form of cash (U.S. Dollars), Letter(s) of Credit, or other security acceptable to the Requesting Party, and only in the case of Company, it also means, in addition to the foregoing, a guarantee from C. Delaware Inc. or, in the case of a substitute guarantor, a substitute guarantor that has a Credit Rating equal to or greater than Baa3 from Moody's or BBB- from S&P.
- 1.45 **Prime Rate** means the lesser of (i) the rate published from time to time in The Wall Street Journal, as the prime lending rate, and (ii) the maximum rate permitted by applicable law.
- 1.46 **Receiving Party** is defined in Article 6.
- 1.48 **Replacement Price** means the price at which Customer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point any replacement for any Block Energy that is required to be delivered but is not delivered by Company in accordance with this Agreement.
- 1.49 **Requesting Party** is defined in Article 6.
- 1.50 **Retail Load** means the Energy metered at Customer's ultimate receipt point located within Comision Federal de Electricidad.
- 1.51 **Sale Price** means the price of USD\$\_\_\_\_\_ (\_\_\_\_\_ American Dollars) per MWh. Also, it means the price at which Company, acting in a commercially reasonable manner, resells any Block Energy Service not received by Customer, deducting from such proceeds any (i) costs reasonably incurred by Company in reselling such Block Energy Service and (ii) additional transmission charges, if any, reasonably incurred by Company in delivering such services to the third party purchasers, or at Company's option, the market price at the Delivery Point for such services not received as determined by Company in a commercially reasonable manner. For purposes of this definition, Company shall be considered to have resold such services to the extent Company shall have entered into one or more arrangements in a commercially reasonable manner whereby Company repurchases its obligation to purchase and receive these Block Energy Services from another party at the Delivery Point.
- 1.52 **S&P** means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).
- 1.53 **Term** means the term of this agreement, as it is defined in Section 2.1.
- 1.54 **Termination Costs** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating this Agreement or any arrangement pursuant to which it has hedged its obligations or entered into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the early termination of this Agreement.

- 1.55 **Termination Payment** means, with respect to this Agreement and the Non-Defaulting Party, the Liquidated Losses or Liquidated Gains, and Termination Costs, expressed in U.S. dollars, which such Party incurs as a result of the early termination of this Agreement.
- 1.56 **Transaction** means a particular transaction agreed to by the Parties relating to the sale and purchase of a Block Energy Service pursuant to this Agreement, as evidenced by a Confirmation executed by both Parties.
- 1.57 **Transmission Contingent** means, with respect to a Transaction, that the performance of Seller shall be excused, and no damages shall be payable including, without limitation, any amounts determined pursuant to Section 7.9, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Delivery Point, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Block Energy Service is firm or non-firm. If the transmission (whether firm or non-firm) that Seller is attempting to secure is from the generating source to the Delivery Point is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller has secured from source to the Delivery Point is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.
- 1.58 **Transmission & Distribution Service Provider or TDSP** means any entity or entities transmitting or transporting the Firm Energy and Ancillary Services and measuring the Energy sold hereunder on behalf of Company or Customer to the applicable Delivery Point under this Agreement.

**Other Definitions.** Certain other definitions as required appear in subsequent parts of this Agreement.

## ARTICLE 2 - TERM, SERVICE AND DELIVERY PROVISIONS

- 2.1 **Term, Transactions, Governing Terms.** The Term of this Agreement shall begin as of the Effective Date and shall be valid for [REDACTED] months after the Effective Date of this Agreement. A Transaction shall be entered into upon execution by the Parties of the Confirmation reflecting the terms of such Transaction. Each Transaction between the Parties shall be governed by this Agreement. This Agreement (including all exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations reflecting the terms of a Transaction) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Agreement and any terms of a Transaction shall be resolved in favor of the terms of this Agreement. The applicable provisions of this Agreement shall continue in effect in accordance with Article 16.10, Survival, and to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, payments pertaining to liability and indemnification obligations arising from acts or events that occurred during the Delivery Period, or other such provisions that, by their terms or operation, survive the termination of this Agreement.
- 2.2 **Delivery Period.** The Delivery Period with respect to a Transaction shall be specified on the individual Confirmation reflecting the terms of such Transaction.
- 2.3 **No Obligation to Build.** The Company has no obligation to plan and build generating facilities to provide Block Energy Service to Customer during the Term of this Agreement.
- 2.4 **Delivery Point.** The Delivery Point for the Block Energy Service will be the point in the United States at which the transmission system connects to the Laredo DC-Tie (DC\_L), which is a 100 MW Variable Frequency Transformer located at the AEP Laredo VFT station.
- 2.5 **Customer Provided Equipment.** Customer will provide or cause to be provided any and all transmission and related services required to take delivery of the Block Energy at the Delivery Point. *[NTD: Discuss provision of QSE Services, which may be provided or arranged by Seller]*
- 2.6 **Early Termination.** Customer may terminate this contract early without justification, if he does so by written notice to the Company at least three months prior to such termination date.

Therefore, if for any reason relating to this Agreement, the CFE or CRE attempts or intends to stop supplying electrical power or to sanction the Customer, this Agreement may be immediately terminated. But it will be necessary to justify and demonstrate the written notice of the CFE and/or CRE and provide the Company with a 20 working days for the Company or the Customer to solve the situation. *[NTD: Discuss this termination right,*

*Including whether it should apply to the entire Agreement or to a specific Transaction]*

### ARTICLE 3 - SALE AND PURCHASE

3.1 **Block Energy Service.** In such quantities scheduled or requested by Buyer and set forth on the applicable Confirmation, not to exceed 100 megawatt hours (MWh) in any one-hour period ("Specified Quantity"), Seller shall generate and deliver Energy to the Delivery Point and Buyer shall accept and take delivery of delivered Energy during any hour pursuant to the terms of this Agreement during the Term. Prior to the first delivery of Energy under a Transaction, and with at least with twenty-four (24) hour advance notice, the Company will confirm the delivery of Energy, appointing the day and time when the supply will start. This shall be done via fax and/or email.

3.2 **Capacity.** All Transactions under this Agreement shall be for Energy only and do not include any future capacity structure that may be created by any regulatory authorities.

3.3 **Transmission Service.** Customer, and not Company, shall arrange for transmission service through the Comision Federal de Electricidad (CFE) from the Delivery Point and Customer shall be responsible during the Delivery Period for the provision of all such service in Mexico and Customer (not Company) shall be responsible for all related Mexican transmission, transmission related charges, or Ancillary Service Charges, from and after the Delivery Point.

3.4 **Losses.** Customer shall be responsible for and shall pay all Losses incurred from the Delivery Point to the Retail Load of Customer. Company agrees to pay for all Losses to the Delivery Point, to the extent such Losses result in the Metered Energy being less than the Specified Quantity.

1.1 **Meter and Supporting Facilities.** The Company shall be responsible for any and all sub-transmission and distribution costs and charges up to the Delivery Point. The Company shall be responsible for the costs associated with reading, maintaining or upgrading their meter.

1.2 **Renewable Portfolio Standards.** Company has no obligation to meet the requirements of any renewable portfolio supply standards imposed on Customer.

### ARTICLE 4 - MONTHLY BILLING

1.3 **Monthly Payment.** In each Billing Period during the Delivery Period, Company shall calculate the [Monthly/Periodic] Payment consisting of the Block Energy Charges, the Transmission and Ancillary Service Charges (if applicable), [the QSE Service Charges *to discuss*] and any Taxes, Fees and Levies related to the purchase and sale of Energy at the Delivery Point.

1.4 **Energy Charges.** Customer shall pay Company an Energy Charge expressed in United States Dollars \$XX.XX per MWh of Metered Energy delivered to the Delivery Point within each Billing Period.

4.3 **Transmission & Ancillary Service Charges.** For each month of the Delivery Period, Company will pay all ERCOT Fees and Ancillary Services assessed by ERCOT in respect of Customer's Block Energy under any Confirmation. *[NTD: Discuss whether these charges will be passed through or incorporated into the Energy Charge.]*

4.4 **Taxes, Fees and Levies.**

(a) Company shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Block Energy up to the Delivery Point. Customer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Block Energy Service from the Delivery Point.

(b) The Parties understand and agree that laws, regulations, treaties or other rules binding upon the Parties could be enacted, approved, issued, promulgated, interpreted or enforced by Governmental Authorities with effect during the Term that restrict, cap or place a cost, charge or other financial burden on emissions of carbon dioxide (CO<sub>2</sub>) and other greenhouse gases that contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, or on the consumption, transportation or use of energy from such sources ("GHG Laws"). The Parties agree that restrictions, costs, charges, taxes and other financial impacts associated with GHG Laws that arise prior to the Delivery Point from the production of Energy from fossil-fuel power plants and the transmission of such

Energy up to the Delivery Point(s) shall be the responsibility of Company. The Parties agree that restrictions, costs and taxes associated GHG Laws that arise from the sale to, or the purchase, consumption or use of, Energy by Customer or its retail customers, or from the receipt, possession or transportation of Energy at and after the Delivery Point(s), shall be the responsibility of Customer.

#### 4.5 Payment.

(a) **Invoice and Payment Date.** Customer shall pay Company any amounts due and payable hereunder on or before the tenth (10<sup>th</sup>) day after receipt of the electronic invoice, or if such day is not a Business Day, then on the next Business Day. In the event of noncompliance with such payment within ten (10) days, the Company may collect it directly from the revolving Letter of Credit, from which the amount charged must be replaced by Customer.

(b) **Payment Method and Interest.** All invoices shall be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. For payments to Company, Customer shall wire transfer to BNK: [REDACTED]; ABA: [REDACTED]; ACCT: [REDACTED]. If all or any part of any amount due and payable pursuant to this Agreement shall remain unpaid after the date due, interest shall thereafter accrue and be payable to Company on such unpaid amount at a rate per annum equal to the Prime Rate plus 2% per annum; provided, however, that no interest shall accrue in respect of adjustment amounts calculated in accordance with Section 4.1.

4.6 **Payment Netting.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party under this Agreement, interest, and payments 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 Article 4 shall not take into account or include any Performance Assurance or guaranty, which may be in effect to secure a Party's performance under this Agreement. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly Billing Period, that Party shall pay such sum in full when due.

4.7 **Overpayment.** Inadvertent overpayments shall be returned or deducted from subsequent payments at the option of the overpaying Party with interest accrued at the Prime Rate of the United States of America plus 2% per annum from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

### ARTICLE 5 - ERCOT IMPLEMENTATION

#### 5.1 Implementation.

(a) **ERCOT Documents.** Company and Customer shall enter into, and file with ERCOT and other applicable entities, all necessary documents with respect to fulfilling its requirements for providing the Block Energy Service.

(b) **Load Serving Entity.** The Parties recognize that Company is not the Customer's LSE notwithstanding Company's obligations as set forth herein.

### ARTICLE 6 - CREDITWORTHINESS

6.1 **Financial Capacity.** Customer's payment obligations will be supported by the issuance of a revolving and irrevocable Letter of Credit.

6.2 **Letter of Credit.** To ensure proper performance of its obligations under this Agreement, Customer agrees to provide a revolving and irrevocable letter of credit for the equivalent of two (2) months of the expected consume, and if in any case it has been due and/or executed, wholly or partially, said letter of credit shall be immediately renewed by the same amount. *[NTD: This section will need to be rounded out with details on the amount of the Letter of Credit and the issuing bank.]*

#### 6.3 Remedies

Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following:

- (a) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) draw on any outstanding Letter of Credit issued for its benefit.

***[NTD: This Section 6.3 will need to refer to the specific draw conditions (i.e., non-payment of an amount due) that will be referenced in the Letter of Credit.]***

**6.4 Additional Performance Guarantee.** If at any time and periodically during the term of this Agreement (and regardless of whether an Event of Default has occurred or not), the Termination Payment that would be owed to the Company exceeds the threshold of the Letter of Credit referred to in Section 6.2 then, the Company, on any Business Day, may request that Customer deliver an additional Performance Guarantee in the form of a Letter of Credit in an amount equal to 2 months of billing by reference to the average of the previous 2 months ("Performance Guarantee Customer"), which shall be issued within ten (10) business days. If this Performance Guarantee is not issued, the calculation of the Termination Payment will be in accordance with Section 7.3 by the Company as if this Agreement had been discharged, and shall also include all amounts owed but not have been paid by the Customer to the Company, whether or not payable for performance and supplied in accordance with the guidelines of this Agreement.

## ARTICLE 7 - DEFAULT AND REMEDIES

**7.1 Events of Default.** Any one or more of the following shall constitute an "Event of Default" hereunder with respect to either Party (the "Defaulting Party"):

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (b) 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 representation or warranty is not remedied within fifteen (15) Business Days after written invoice;
- (c) The failure by Customer to provide and maintain the Letter of Credit as set forth in Article 6;
- (d) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default as specified above, if such failure is not remedied within five (5) Business Days after written notice); or
- (e) Such Party becomes Bankrupt, or is put in bankruptcy protection proceedings.

**7.2 Declaration of an Early Termination Date and Calculation of Termination Payment.** 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 (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate the Agreement between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance.

The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment for this Agreement as of the Early Termination Date. The Termination Payment will be determined by the Non-Defaulting Party using the Forecasted Remaining Quantities. As used in this paragraph, "Forecasted Remaining Quantities" means the Non-Defaulting Party's commercially reasonable forecast of the quantities of Energy required to provide Block Energy Service for the remainder of the Delivery Period that would have been delivered on an hourly basis had the Agreement been in effect.

**7.3 Net Termination Payment.** The Non-Defaulting Party shall aggregate the Termination Payment into a single amount by: netting out (a) the Termination Payment that is due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 6, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) the Termination Payment that is due to the Non-Defaulting Party, plus any or all other amounts due to the Non-

Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party, as appropriate.

In case of default by the Client and an early termination of the Agreement without justified cause and without a six (6) months' notice as mandated in this Agreement, the penalty to the Customer shall be two (2) months of billing, as the average of the last two (2) months billed. *[NTD: This specific remedy should be moved to Section 2.6 along with the termination for convenience provision]*

**7.4 Notice of Payment of Termination Payment.** As soon as practicable after a termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) days after such notice is effective. Notwithstanding any provision to the contrary in this Agreement, the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under Article 7 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that any other obligations of any kind whatsoever of the Defaulting Party to make payments to the Non-Defaulting Party under this Agreement or otherwise have been fully performed.

**7.5 Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that where the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Non-Defaulting Party's calculation of the Termination Payment. If the Non-Defaulting Party is financially insecure, such Non-Defaulting Party shall hold such Performance Assurance in a separate account, pending resolution of the dispute.

**7.6 Closeout Setoffs.** After calculation of a Termination Payment in accordance with Section 7.2, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to:

- (a) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party, and/or
- (b) to the extent the Agreement is not yet liquidated in accordance with Section 7.2, withhold payment of the Termination Payment to the Defaulting Party.

The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

**7.7 Suspension of Performance.** Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right;

- (a) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date has been declared and notice thereof pursuant to Section 7.2 has been given, and
- (b) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

**7.8 Obligations Following Expiration or Termination.** Upon the termination or expiration 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 Company to supply the Block Energy Service shall cease, and Customer and Company shall immediately make all necessary filings with ERCOT, and perform all other acts necessary to transfer all such rights and interests back to Customer, in the case of an Early Termination Date.

**7.9 Remedies for Failure to Deliver/Receive.**

If Company fails to schedule and/or deliver all or part of the Energy pursuant to this Agreement, and such failure is

not excused under the terms of the Energy product or this Agreement or by Customer's failure to perform, then Company shall pay Customer within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Energy Charge portion of the [Contract Rate] from the Replacement Price. Company acknowledges and agrees that is commercially reasonable for Customer to rely on the automatic mechanisms of the ERCOT spot market to supply a replacement for any Firm Energy deficiency, and that the costs Customer incurs by such reliance, including any deficiency charges, are reasonably incurred for the purposes of determining the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

If Customer fails to schedule (if necessary) and/or receive all or part of the Energy product pursuant to this Agreement and such failure is not excused under the terms of the Energy product or this Agreement or by Company's failure to perform, then Customer shall pay Company within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sale Price from the Energy Charge portion of the Contract Rate. Customer acknowledges and agrees that is commercially reasonable for Company to rely on the ERCOT spot market to sell any Firm Energy that Customer fails to receive, and that the costs Company incurs by such reliance are reasonably incurred for the purposes of determining the Sale Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE 8 – CURTAILMENT, TEMPORARY INTERRUPTIONS AND FORCE MAJEURE**

8.1 **Curtailment.** If there is a shortage of Energy requiring Company to curtail Firm Energy deliveries, then upon being notified by ERCOT, Company will curtail the sale of Energy to Customer. In such event, Company shall not incur any liability to Customer in connection with any such action so taken by Company.

8.2 **Temporary Interruptions.** Company will use reasonable diligence in furnishing Firm Energy to Customer, but Company 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 shall not constitute a breach of the obligations of Company under this Agreement, and Company shall not in any such case be liable to Customer for damages resulting from any such temporary interruptions of service.

8.3 **Force Majeure.** 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 this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. 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.

8.4 **Force Majeure Exceptions.** Force Majeure shall not be based on (i) the loss of Customer's Retail Load; (ii) Customer's inability economically to use or resell the Block Energy Service; (iii) the loss or failure of any portion of Company's generation supply; or (iv) Company's ability to resell the Block Energy Service at a price greater than the pricing set forth herein.

#### **ARTICLE 9 - NOTICES, REPRESENTATIVES OF THE PARTIES**

9.1 **Notices.** Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. Such notice shall be sent by facsimile, electronic messaging (confirmed by telephone), courier, personally delivered or mailed, postage prepaid, to the representative of the other Parties designated in this Article 9. Any such notice, demand, or request shall be deemed to be given (i) when received by facsimile or electronic messaging, (ii) when actually received if delivered by courier, overnight mail or personal delivery, or (iii) three (3) days after deposit in the United States mail, if sent by first class mail.

Notices and other communications by Company to Customer shall be addressed to:

CLIENT:

[REDACTED]  
[ TX ]  
[REDACTED]

Notices and other communications by Customer to Company shall be addressed to:

COMPANY  
[REDACTED]  
Phone: (XXX) [REDACTED]

Any Party may change its representative by written notice to the other Parties.

9.2 **Authority of Representative.** The Parties' representatives designated in Section 9.1 shall have full authority to act for their respective principals in all technical matters relating to the performance of this Agreement. The Parties' representatives shall not, however, have the authority to amend, modify or waive any provision of this Agreement unless they are authorized officers of their respective entities and such amendment, modification or waiver is made pursuant to Article 16.

#### ARTICLE 10 - LIABILITY, INDEMNIFICATION, AND RELATIONSHIP OF PARTIES

##### 10.1 **Limitation on Consequential, Incidental and Indirect Damages.**

TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER CUSTOMER NOR COMPANY, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, MEMBERS, PARENTS OR AFFILIATES, SUCCESSORS OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS 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 THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, 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. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, UNLESS OTHERWISE SPECIFIED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. THE PROVISIONS OF THIS SECTION 10.1 SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

##### 10.2 **Indemnification.**

- (a) Each Party shall indemnify, defend and hold harmless the 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 title to Block Energy Service is vested in such Party as provided in Section 10.4.
- (b) Company assumes no responsibility of any kind with respect to the construction, maintenance, or operation

of the system or other property owned or used by Customer; and Customer agrees to protect, indemnify and save harmless Company from any and all claims, demands, or actions for injuries to person or property by any person, firm or corporation in any way resulting from, growing out of, or arising in or in connection with (a) the construction, maintenance or operation of Customer's system or other property, or (b) the use of, or contact with, Energy delivered hereunder after it is delivered to Customer and while it is flowing through the lines of Customer, or is being distributed by Customer, or is being used by Retail Load.

If any Party intends to seek indemnification under this Section 10.2 from the other Party with respect to any Claim, the Party seeking indemnification shall give such other Party notice of such Claim within fifteen (15) days of the commencement of, or actual knowledge of, such Claim. Such Party seeking indemnification 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.

10.3 **Independent Contractor Status.** Nothing in this Agreement shall be construed as creating any relationship among Customer and Company other than that of independent contractors for the sale and purchase of Block Energy Service. No Party shall be deemed to be the agent of any other Party for any purpose by reason of this Agreement. No partnership or joint venture or fiduciary relationship among the Parties is intended to be created by this Agreement. Each party may engage a broker or other agent in connection with negotiating this Agreement, and each party will be responsible for paying for the services of any such broker or agent that it engages.

10.4 **Title; Risk of Loss.** Title to and risk of loss related to the Block Energy Service shall be responsibility of the Company up to, and immediately before, the Delivery Point, and title to and risk of loss with respect to the Block Energy Service shall transfer to Customer at the Delivery Point.

## ARTICLE 11 - REPRESENTATIONS AND WARRANTIES

11.1 **Representations and Warranties of Each Party.** Company and Customer each represents and warrants 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;
- (a) 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 Bankrupt; and
- (b) There is not pending or, to its knowledge, threatened against it any legal proceedings that could materially and/or adversely affect its ability to perform its obligations under this Agreement.

11.2 **Customer Additional Covenants.** Customer represents, warrants and agrees to and with Company that except as otherwise provided herein, with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of lack of jurisdiction within Texas under Federal or state law or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.

## ARTICLE 12 - ASSIGNMENT

12.1 **General Prohibition Against Assignments.** Except as provided in Section 12.2 below, no Party shall

assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld or delayed.

**12.2 Exceptions to Prohibition Against Assignments.** A Party may, without the other Party's prior written consent, (and without relieving itself from liability hereunder) (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an Affiliate of such Party (which Affiliate shall be of equal or greater creditworthiness); or (iii) 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 the assigning Party.

#### **ARTICLE 13 – CONFIDENTIALITY**

To the extent permitted by law, all Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, 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 (a) to a third party for the purpose of effectuating the supply, transmission and/or distribution of Block Energy Service to be delivered pursuant to this Agreement, (b) to regulatory authorities of competent jurisdiction, or as otherwise required by applicable law, regulation or order including any Texas Public Records Law (provided Company's and Customer's trade secrets or proprietary information is redacted to the fullest extent permitted by law), (c) as part of any required, periodic filing or disclosure with or to any regulatory authority of competent jurisdiction and (d) 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 limit the recipient's use of such information only for the purpose of the subject transaction and that provide for remedies for non-compliance.

In the event that a Party ("Disclosing Party") is requested or required by law or regulatory rule to disclose any Confidential Information, 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 or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order, other confidentiality arrangement or the receipt of a waiver hereunder, the Disclosing Party, on the advice of counsel, is compelled to disclose Confidential Information, the Disclosing Party may disclose that portion of the Confidential Information which the Disclosing Party's counsel advises that the Disclosing Party is compelled to disclose.

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.

Notwithstanding the above provisions, Company and Customer shall be permitted to communicate with ERCOT any necessary information, including Confidential Information, with regard to implementation of this Agreement, and will make all reasonable efforts to ensure that Confidential Information remains confidential.

#### **ARTICLE 14 - REGULATORY AUTHORITIES**

**14.1 Compliance with Laws.** Each Party shall perform its obligations hereunder in accordance with applicable laws, 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 laws 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.

#### **ARTICLE 15 - STANDARD OF REVIEW FOR PROPOSED CHANGES, DISPUTE RESOLUTION**

**15.1 Standard of Review.** (a) All rates, terms and conditions as specified in this Agreement shall remain in effect in accordance with their terms and shall not be subject to change by application to any local, state or federal regulatory body, and each Party waives any such rights.

(b) [This Agreement is for products and services to be delivered or purchased in the ERCOT reliability region. All rates, terms and conditions as specified in this Agreement and any Confirmation hereunder

shall remain in effect in accordance with their terms and shall not be subject to change through application to Public Utility Commission of Texas ("PUCT"). Absent the agreement of all parties to a proposed change, the standard of review for changes to any portion of this Agreement, whether proposed by a party, a non-party, or the PUCT acting sua sponte, shall be the "public interest" standard of review.

(c) It is the intent and understanding of the Parties to this Agreement that the Federal Energy Regulatory Commission ("FERC") does not have jurisdiction over this Agreement. Without waiving any rights the Parties may have to assert that FERC does not have jurisdiction, the parties wish to make the following agreements in the event that a party, a non-party, or the FERC acting sua sponte asserts that FERC has jurisdiction over this Agreement:

All rates, terms and conditions as specified in this Master Agreement and any Confirmation hereunder shall remain in effect in accordance with their terms and shall not be subject to change through application to FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act. Absent the agreement of all parties to a proposed change, the standard of review for changes to any section of this Master Agreement or any Confirmation proposed by a party, a non-party, or the FERC acting sua sponte, shall be the "public interest" standard of review. – ***NTD: Subject to regulatory review.***

**15.2 Resolution by Officers of the Parties.** In the event of any dispute among the Parties arising out of or relating to this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution who shall meet within ten (10) days after notice is given by either Party. If within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution to the dispute then, the Parties, may, upon mutual agreement of the Parties, agree to binding arbitration before a single arbitrator. If the parties fail to select an arbitrator within thirty (30) days after mutual agreement to submit a matter to arbitration, the arbitrator shall be named in accordance with AAA's Rules for Non-administered Arbitration then in effect (the "Rules"). The Rules shall govern any such proceedings. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The Parties shall share equally the services and expenses of the arbitrator and each shall pay its own costs, expenses, and attorneys' fees. Fees and expenses of the court reporter shall be paid in equal parts by the Parties hereto.

In the event the Parties do not mutually agree to binding arbitration, Company and Customer each hereby knowingly, voluntarily and intentionally waives any rights it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement, any course of conduct, course of dealing, statements (whether oral or written) or actions of Company and Customer related hereto, and expressly agree to have any disputes arising under or in connection with this Agreement be adjudicated by a judge in any court of competent jurisdiction sitting without a jury, and each party waives any right to a trial by jury in such courts.

With respect to any suit, action, or proceedings relating to this Agreement ("Proceedings"), Company and Customer irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of Texas and the United States District Court located Austin, Texas; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party. In the event either Party does not appoint a process agent in Texas to receive, for it and on its behalf, service of process in any Proceedings, such Part agrees that service of process may be made via the Texas Secretary of State, provided a copy of such papers are also sent to the addresses set forth in Section 9.1.

## ARTICLE 16 - GENERAL PROVISIONS

**1.5 Third Party Beneficiaries.** This Agreement is intended solely for the benefit of the Parties thereto, 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.

**1.6 Waivers.** The failure of a Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this 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.

**1.7 Interpretation.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES

HEREUNDER AND THE INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT SHALL BE IN ACCORDANCE WITH AND CONTROLLED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

- 1.8 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, 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 reasonably necessary in order to give effect to the original intention of the Parties.
- 1.9 **Modification.** No modification to this Agreement will be binding on any Party unless it is in writing and signed by the Parties.
- 1.10 **Counterparts.** This Agreement may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 1.11 **Headings.** 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.
- 1.12 **Intentionally Omitted.**
- 1.13 **Records.** The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least one (1) year such records as may be needed to afford a clear history of Energy Service supplied pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended.
- 1.14 **Survival.** The provisions of Articles 10, 13, 15, and Sections 16.8 and 16.9 shall survive termination of this Agreement hereof, and any other Section of this Agreement that specifies by its terms that it survives termination, shall survive the termination or expiration of this Agreement.

#### **ARTICLE 17 - RULES OF CONSTRUCTION**

Terms used in this Agreement but not listed in this Article or defined in Article 1 shall have meanings as commonly used in the English language.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

The masculine shall include the feminine and neuter. The words "include", "includes" and "including" are deemed to be followed by the words "without limitation."

References to contracts, agreements and other documents and instruments shall be references to the same as amended, supplemented or otherwise modified from time to time.

The Appendices attached hereto are incorporated in and are intended to be a part of this Agreement. References to laws and to terms defined in, and other provisions of, laws shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.

References to a person or entity shall include its successors and permitted assigns and, in the case of a governmental authority, any entity succeeding to its functions and capacities.

References to "Articles," "Sections," or "Appendices" shall be to articles, sections, or Appendices of this Agreement.

Unless the context plainly indicates otherwise, words importing the singular number shall be deemed to include the plural number (and vice versa); terms such as "hereof," "herein," "hereunder" and other similar compounds of the word "here" shall mean and refer to the entire Agreement rather than any particular part of the same.

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

**BUYER:** [REDACTED]

[REDACTED]

**SELLER:** [REDACTED] LLC

[REDACTED]  
Title: PRESIDENT

#### APPENDIX A

#### EXAMPLE MASTER MARKET BASED RATE AGREEMENT CONFIRMATION LETTER

This Confirmation Letter shall confirm the Transaction agreed to on [REDACTED] between [REDACTED] ("Customer") and [REDACTED] LLC ("Company") regarding the sale/purchase of the Block Energy Service under the terms and conditions as follows:

#### TERMS

**Company:** [REDACTED], LLC

**Customer:** [REDACTED], LLC

Attn: President

Attn: [REDACTED]

#### APPLICABLE AGREEMENT:

The terms and conditions of the Master Market Based Rate Block Energy Service Agreement as executed between the parties on [REDACTED] (the "Master Agreement"), are incorporated herein by this reference. Any inconsistency between this Confirmation Letter and the Master Agreement shall be resolved in favor of this Confirmation Letter. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. Terms used but not defined in this Confirmation Agreement or Master Agreement that are defined in the Electric Reliability Council of Texas ("ERCOT") Protocols shall have the meanings ascribed to them by such Protocols.

Unless terminated at a prior date in accordance with its terms, this Confirmation Letter shall terminate on [REDACTED].

I. TRANSACTION TYPE:

**Block Energy Service**

Transmission Contingency

Transmission Contingent     Company     N/A     Customer

Other transmission contingency

(Specify)

**2. QUANTITY AND PRICE:**

2.1            Quantity and Charges: The Quantity shall be the [redacted] per megawatt hour. The Quantity shall be multiplied by the Energy Charge.

2.2            Energy Charge: The Energy Charge shall be [redacted].

**3. DELIVERY:**

3.1            Delivery Period: From [redacted] through [redacted], from hours ending 0100 through 2400 Central Prevailing Time (USA) from [redacted] through [redacted], including NERC holidays.

3.2            Delivery Point: [Insert name of applicable DC Tie or Settlement Point at the border of the United States and Mexico within ERCOT]

**4. ERCOT PROTOCOLS:**

Protocol Compliance: Each of the Parties to this Confirmation Letter shall comply with the ERCOT Protocols and shall reasonably cooperate with the other Party to this Confirmation Letter in their efforts to comply with the ERCOT Protocols. Customer shall comply with all ERCOT requirements. Additionally, for the purposes of defining each Party's rights and obligations at a given time, the ERCOT Protocols, as amended in accordance with the change procedure(s) described in the ERCOT Protocols and as in effect at the time for performance of any obligation or the exercise of any right, shall govern with respect thereto.

**5. BILLING ADJUSTMENTS:**

All billing-related data may be estimated and, if subject to adjustment by ERCOT, shall be revised to reflect any such adjustment made ERCOT without any interest accrual.

**6. MISCELLANEOUS:**

Fixed Rates: All rates, terms and conditions specified in this Agreement shall remain in effect in accordance with their terms and shall not be subject to change through application to Public Utility Commission of Texas ("PUCT"), or to any local, state or federal regulatory body. Absent the agreement of all parties to the proposed change, the standard of review for changes to any portion of this Agreement with respect to any Transaction entered into hereunder in ERCOT reliability region, whether proposed by a party, a non-party, or the Public Utility Commission of Texas acting sua sponte, shall be the "public interest" standard of review set forth in *High Plains Natural Gas Co. v. Railroad Commission*, 467 SW2d 532 (Tex. Civ. App. - Austin 1971, writ ref'd n.r.e.) or such other standard of review permissible to preserve the intent of the parties pursuant to this Section to uphold the sanctity of contracts without modification.

It is the intent and understanding of the Parties to this Agreement that the Federal Energy Regulatory Commission ("FERC") does not have jurisdiction over this Agreement. Without waiving any rights the

Parties may have to assert that FERC does not have jurisdiction, the parties wish to make the following agreements in the event that a party, a non-party, or the FERC acting sua sponte asserts that FERC has jurisdiction over this Agreement:

The rates for service specified herein shall remain in effect and shall not be subject to change through application to the FERC pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement of all parties thereto. Absent the agreement of all parties to the proposed change, the standard of review for changes to the terms of this Agreement proposed by a party, a non-party or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S. Ct. 2733 (2008) (the "Mobile-Sierra" doctrine), or such other standard of review permissible to preserve the intent of the parties pursuant to this Section to uphold the sanctity of contracts without modification.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

Company: [REDACTED] LLC

Customer: [REDACTED]

Title: [REDACTED]

Title: [REDACTED]

Phone No: [REDACTED]

Phone No: [REDACTED]

E-Mail: [REDACTED]

E-Mail: [REDACTED]