

ISDA[®]

International Swaps and Derivatives Association, Inc.

2010 ISDA ERCOT PROTOCOL

published on November 19, 2010

by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (“**ISDA**”) has published this ISDA ERCOT Protocol (this “**Protocol**”) to enable parties to amend the terms of Covered Protocol Documents (as defined below).

Accordingly, a party that has entered or intends to enter into a Covered Protocol Document may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an “**Adherence Letter**”) to ISDA, as agent, as described below.

1. Amendments

(a) By adhering to this Protocol in the manner set forth in Section 2 below, a party (an “**Adhering Party**”) that wishes to amend the terms of a Covered Protocol Document agrees, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, that the terms of each Covered Protocol Document, if any, between it and each other Adhering Party will be amended with effect from the relevant Implementation Date in accordance with the terms of the applicable Annexes to this Protocol.

(b) The amendments provided for in this Protocol are set forth in Annexes 1 to 3, and each Adhering Party may specify in its Adherence Letter that one or more of these Annexes are applicable or not applicable by checking the relevant box in such Adherence Letter. If an Adhering Party fails to check a box relating to an Annex, it will be deemed to have elected that such Annex is *not* applicable.

(c) In respect of any Covered Protocol Document between two Adhering Parties, where at least one Adhering Party has specified that less than all the Annexes are applicable, only those amendments contained in the Annexes that both parties have specified will be applicable.

2. Adherence and Effectiveness

(a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with the first sentence of Section 5(e) below, to ISDA, as agent, of an Adherence Letter on or before November 29, 2010 (the “**Cut-off Date**”) or during the Subsequent Adherence Period (as defined

below) (if any). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol, subject to any re-opening of the adherence period pursuant to Section 2(e) below.

- (i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.
 - (ii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.
- (b) As between any two Adhering Parties:
- (i) the agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will be effective on the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere; and
 - (ii) the amendments set out in the Annexes that both of the Adhering Parties have specified as applicable will apply between the Adhering Parties from that date, subject to any conditions contained in those Annexes, but in each case with effect from the relevant Implementation Date whether or not the relevant date determined under (i) above falls before, on or after the relevant Implementation Date.
- (c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Protocol Document that the parties may otherwise effect in accordance with the terms of that Covered Protocol Document.
- (i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.
 - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Section will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.
- (d) Each Adhering Party acknowledges and agrees that adherence to this Protocol is irrevocable, irrespective of whether such adherence occurs on or prior to the Cut-off Date or during the Subsequent Adherence Period (if any).
- (e) If ISDA determines in its absolute discretion that market interest justifies reopening adherence to this Protocol, ISDA may designate the first and final day of a subsequent adherence period (a “**Subsequent Adherence Period**”) by giving no less than ten calendar days' notice on its website at www.isda.org (or by other suitable means). In the event that adherence is re-opened, each Adherence Letter effectively delivered on any day during the Subsequent Adherence Period in accordance with the terms of this Protocol shall be deemed to have been effectively delivered.

3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Protocol Document, on the date on which the later of them adheres to this Protocol in accordance with Section 2 above and, if then outstanding, in respect of each Covered Protocol Document between them, that:

(a) **Status.** It (i) is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or (ii) if it otherwise represents its status in or pursuant to a Covered Protocol Document, has such status;

(b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, and has taken all necessary action to authorize such execution, delivery and performance;

(c) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, have been obtained and are in full force and effect and all conditions of any such consents have been complied with;

(e) **Obligations Binding.** Its obligations under the Adherence Letter and the Covered Protocol Documents, in each case as amended by the Adherence Letter and this Protocol, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and

(f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document or Performance Assurance, as applicable, relating to the relevant Covered Protocol Document.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Covered Protocol Document that each of the foregoing representations will be deemed to be a representation for purposes of representations and warranties section of each such Covered Protocol Document entered into prior to the relevant Implementation Date between them.

4. Evidence of Capacity and Authority

Each Adhering Party may deliver to ISDA, as agent, such evidence as it deems appropriate to evidence its capacity to adhere to this Protocol and the authority of anyone signing on its behalf.

5. Miscellaneous

(a) Entire Agreement; Survival.

(i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter. Each Adhering Party acknowledges that in adhering to this Protocol it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in an Annex or elsewhere in this Protocol) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.

(ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of a Covered Protocol Document, all terms and conditions of the relevant Covered Protocol Document will continue in full force and effect in accordance with its provisions as in effect immediately prior to the relevant Implementation Date. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it will form a part of each relevant Covered Protocol Document between the Adhering Parties.

(b) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective if made in accordance with the terms of the Covered Protocol Document and then only with effect between the parties to that Covered Protocol Document (and will only be effective to amend or override the provisions contained in an applicable Annex to this Protocol if it expressly refers in writing to this Section of this Protocol and would otherwise be effective in accordance with the amendment provision of the Covered Protocol Document).

(c) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.

(d) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Protocol Document between them, be governed by and construed in accordance with the law specified to govern that Covered Protocol Document and otherwise in accordance with applicable choice of law doctrine.

(e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at ERCOTprotocol@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's New York office is closed or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day ISDA's New York office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its absolute discretion.

6. Definitions

As used in this Protocol and the Annexes, the following terms have the meanings indicated below. Each capitalized term used in this Protocol or the Annexes but not defined herein or therein has the meaning given to that term in the 2005 ISDA Commodity Definitions, as published by ISDA (the “**Commodity Definitions**”) or, if not defined in the Commodity Definitions, in the ERCOT Nodal Protocols:

“**Covered EEI Master Agreement**” means an EEI Master Agreement entered into between two Adhering Parties.

“**Covered ISDA Master Agreement**” means an ISDA Master Agreement that includes a Power Annex entered into between two Adhering Parties.

“**Covered Protocol Document**” includes a Covered Transaction, a Covered ISDA Master Agreement and a Covered EEI Master Agreement, as applicable.

“**Covered Transaction**” means, for purposes of Annex 1 only, a cash-settled Transaction that is governed by an ISDA Master Agreement between two Adhering Parties and references the Market Clearing Price for Energy (the “**MCPE**”) price for any of the North, South, West or Houston zones in the ERCOT region.

“**Credit Support Document**” has the meaning given to that term in the related Covered ISDA Master Agreement.

“**EEI Master Agreement**” means any Master Power, Purchase & Sale Agreement, as published by the Edison Electric Institute, that is either (i) executed by two Adhering Parties; or (ii) entered into by two Adhering Parties by execution of a Confirmation that is still outstanding as of the Implementation Date and pursuant to which one Adhering Party is deemed to have entered into such an agreement with the *other* Adhering Party until such time as such an agreement has been executed by such Adhering Parties; and, in each case, has been entered into by the Adhering Parties prior to, on or after the Implementation Date.

“**ERCOT**” means the Electric Reliability Council of Texas.

“**ERCOT Nodal Protocols**” means the ERCOT Nodal Protocols as adopted by ERCOT, including any attachments or exhibits referenced in such documents, as amended from time to time.

“**Implementation Date**” means, in respect of each Annex, December 1, 2010.

“**ISDA Master Agreement**” means:

- (i) Any 2002 ISDA Master Agreement, as published by ISDA (a “**2002 ISDA Master Agreement**”), entered into by execution by two Adhering Parties of a Confirmation that is still outstanding as of the Implementation Date and pursuant to which one Adhering Party is deemed to have entered into a 2002 ISDA Master Agreement with the other Adhering Party until such time as a 2002 ISDA Master Agreement has been executed by such Adhering Parties;

- (ii) Any 2002 ISDA Master Agreement executed by two Adhering Parties;
- (iii) Any 1992 ISDA Master Agreement (Multicurrency – Cross Border), as published by ISDA (a “**1992 ISDA Master Agreement**”), entered into by execution by two Adhering Parties of a Confirmation that is still outstanding as of the Implementation Date and pursuant to which one Adhering Party is deemed to have entered into a 1992 ISDA Master Agreement with the other Adhering Party until such time as a 1992 Master Agreement has been executed by such Adhering Parties; and
- (iv) Any 1992 ISDA Master Agreement executed by two Adhering Parties;

in each case, entered into by the Adhering Parties prior to, on or after the Implementation Date.

“**Performance Assurance**” has the meaning given to that term in the related Covered EEI Master Agreement.

“**Power Annex**” means the North American Power Annex substantially in the form published by ISDA (and which is included in Sub-Annex F of the 2005 ISDA Commodity Definitions).

Form of Adherence Letter

[Letterhead of Adhering Party]

November [*], 2010

Send to ERCOTprotocol@isda.org

Dear Sirs,

2010 ISDA ERCOT Protocol - Adherence

The purpose of this letter is to confirm our adherence to the ISDA ERCOT Protocol as published by the International Swaps and Derivatives Association, Inc. on November 19, 2010 (the “**Protocol**”). This letter constitutes an Adherence Letter as referred to in the Protocol.

The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of any Covered Transaction, Covered ISDA Master Agreement or Covered EEI Master Agreement, as applicable, entered into prior to, on or after the relevant Implementation Date between us and each other Adhering Party.

1. Specified Terms

Each of the following Annexes will be applicable if specified below as applicable¹:

		Applicable	Not Applicable
Annex 1	No Market Disruption Event; Modification to Commodity Reference Price/Floating Price; Corrections to Published Prices		
Annex 2	Additional Provisions regarding ERCOT Charges to be Incorporated into Covered ISDA Master Agreements		
Annex 3	Additional Provisions regarding ERCOT Charges to be Incorporated into Covered EEI Master Agreements		

¹ Please specify which of the Annexes 1 to 3 are applicable by checking the relevant box. If an Adhering Party fails to check a box relating to an Annex, it will be deemed to have elected that such Annex (or the relevant part thereof, as the case may be) is *not* applicable.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:

E-mail:

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]²

By:

Name:
Title:
Signature:

² Specify legal name of Adhering Party.

ANNEX 1
No Market Disruption Event;
Modification to Commodity Reference Price/Floating Price;
Corrections to Published Prices

If this Annex 1 has been elected to apply, then as between two Adhering Parties who have so elected, the provisions below shall apply to any Covered Transaction that is in effect between them as of the Implementation Date or that may be entered into between them on or after the Implementation Date:

(a) No Market Disruption Event. Each Covered Transaction shall be modified by adding the following:

“Notwithstanding anything to the contrary herein or in Section 7.4 of the 2005 ISDA Commodity Definitions (the “Commodity Definitions”), the implementation of the “Texas Nodal Market” in the Electric Reliability Council of Texas (“ERCOT”) region pursuant to the ERCOT Nodal Protocols will not result in a “Price Source Disruption”, a “Material Change in Formula” or any other “Market Disruption Event” or “Additional Market Disruption Event”, each as defined in the Commodity Definitions or otherwise herein.”

(b) Modification to Commodity Reference Price/Floating Price.

i. **South Zone.** Each Covered Transaction that references ERCOT’s Market Clearing Price for Energy (the “MCPE”) for the ERCOT south congestion zone (howsoever described) (such price reference, the “South Zone MCPE Price Reference”) shall be modified by replacing the South Zone MCPE Price Reference with the following:

“ELECTRICITY-ERCOT-SOUTH 345KV HUB-REAL TIME: For each hour specified in the Confirmation that is relevant to the determination of the Floating Price, the arithmetic average of the Real Time Settlement Point Prices for the ERCOT South 345 kV Hub as published by ERCOT for each Settlement Interval comprising that hour.”

ii. **North Zone.** Each Covered Transaction that references ERCOT’s MCPE for the ERCOT north congestion zone (howsoever described) (such price reference, the “North Zone MCPE Price Reference”) shall be modified by replacing the North Zone MCPE Price Reference with the following:

“ELECTRICITY-ERCOT-NORTH 345KV HUB-REAL TIME: For each hour specified in the Confirmation that is relevant to the determination of the Floating Price, the arithmetic average of the Real Time Settlement Point Prices for the ERCOT North 345 kV Hub as published by ERCOT for each Settlement Interval comprising that hour.”

iii. **West Zone.** Each Covered Transaction that references ERCOT’s MCPE for the ERCOT west congestion zone (howsoever described) (such price reference, the “West Zone MCPE Price Reference”) shall be modified by replacing the West Zone MCPE Price Reference with the following:

“ELECTRICITY-ERCOT-WEST 345KV HUB-REAL TIME: For each hour specified in the Confirmation that is relevant to the determination of the Floating Price, the arithmetic average of the Real Time Settlement Point Prices for the ERCOT West 345 kV Hub as published by ERCOT for each Settlement Interval comprising that hour.”

- iv. ***Houston Zone.*** Each Covered Transaction that references ERCOT’s MCPE for the ERCOT Houston congestion zone (howsoever described) (such price reference, the “Houston Zone MCPE Price Reference”) shall be modified by replacing the Houston Zone MCPE Price Reference with the following:

“ELECTRICITY-ERCOT-HOUSTON 345KV HUB-REAL TIME: For each hour specified in the Confirmation that is relevant to the determination of the Floating Price, the arithmetic average of the Real Time Settlement Point Prices for the ERCOT Houston 345 kV Hub as published by ERCOT for each Settlement Interval comprising that hour.”

- (c) ***Corrections to Published Prices.*** With respect to each Covered Transaction, Section 7.3 of the Commodity Definitions shall be modified by replacing the phrase “30 calendar days” with the phrase “(i) 30 calendar days or (ii) in the case of a correction by ERCOT, such longer time period as is consistent with ERCOT’s procedures and guidelines”.

Annex 2
Additional Provisions regarding ERCOT Charges
to be Incorporated into Covered ISDA Master Agreements

If this Annex 2 has been elected to apply, then as between two Adhering Parties who have so elected, the provisions below shall apply to any Covered ISDA Master Agreement that is in effect between them as of the Implementation Date or that may be entered into between them on or after the Implementation Date:

The Parties agree that the Power Annex to the Covered ISDA Master Agreement shall be amended as follows:

1. Clause (b)(ii) Transmission and Scheduling of the Power Annex shall be amended by adding the following at the end thereof:

“With respect to Firm (LD) Power Transactions and Firm (No Force Majeure) Power Transactions in the Electric Reliability Council of Texas (“ERCOT”) region, the following shall apply, notwithstanding any other Scheduling deadlines in the ERCOT Nodal Protocols:

(A) Definitions: “DRUC Schedule Deadline” means the time at which ERCOT is required to start the DRUC process relating to such day of delivery.

“HRUC Schedule Deadline” means the time at which ERCOT is required to start an HRUC process relating to such hour of delivery.

“First HRUC Schedule Deadline” means the HRUC Schedule Deadline which immediately follows the time at which the Parties entered into the Transaction and which occurs after the start of the next clock hour.

(B) HRUC Scheduling Requirement: Buyer and Seller shall Schedule each hour’s deliveries of the Product with ERCOT prior to the First HRUC Schedule Deadline unless the time at which the Power Transaction was entered into is less than thirty (30) minutes prior to the start of the next clock hour, in which case the HRUC Schedule Deadline immediately following the First HRUC Schedule Deadline shall be the applicable scheduling deadline.

(C) DRUC Scheduling Requirement: If a Power Transaction is entered into prior to that day’s DRUC Schedule Deadline, Buyer and Seller shall Schedule such day’s deliveries of the Product with ERCOT prior to that day’s DRUC Schedule Deadline.”

2. Clause (c)(i) Seller Failure of the Power Annex shall be relabeled (c)(i)(A) and a new Clause (c)(i)(B) shall be added to deal with Seller Failure with respect to Firm (LD) Power Transactions and Firm (No Force Majeure) Power Transactions in the ERCOT region:

“(i)(B) *Seller Failure in the ERCOT region for Firm (LD) Power Transactions and Firm (No Force Majeure) Power Transactions*. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Power Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified in the Elective Provisions, within five (5) Local Business Days of invoice receipt, (i) an

amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and (ii) an amount equal to the ERCOT charges incurred by Buyer, if any, as a result of Seller's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Power Transaction in the ERCOT region prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Clause (b)(ii). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."

3. Clause(c)(ii) Buyer Failure of the Power Annex shall be relabeled (c)(ii)(A) and a new Clause (c)(ii)(B) shall be added to deal with Buyer Failure with respect to Firm (LD) Power Transactions and Firm (No Force Majeure) Power Transactions in the ERCOT region:

"(c)(ii)(B) Buyer Failure in the ERCOT region for Firm (LD) Power Transactions and Firm (No Force Majeure) Power Transactions. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Power Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified in the Elective Provisions, within five (5) Local Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price; and (ii) an amount equal to the ERCOT charges incurred by Seller, if any, as a result of Buyer's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Power Transaction prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Clause (b)(ii). The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."

Annex 3
Additional Provisions regarding ERCOT Charges
to be Incorporated into Covered EEI Master Agreements

If this Annex 3 has been elected to apply, then as between two Adhering Parties who have so elected, the provisions below shall apply to any Covered EEI Master Agreement that is in effect between them as of the Implementation Date or that may be entered into between them on or after the Implementation Date:

The Parties agree that their Covered EEI Master Agreement shall be amended as follows:

1. Section 3.2 Transmission and Scheduling of the Covered EEI Master Agreement shall be amended by adding the following at the end thereof:

“With respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in the Electric Reliability Council of Texas (“ERCOT”) region, the following shall apply, notwithstanding any other Scheduling deadlines in the ERCOT Nodal Protocols:

(A) Definitions: “DRUC Schedule Deadline” means the time at which ERCOT is required to start the DRUC process relating to such day of delivery.

“HRUC Schedule Deadline” means the time at which ERCOT is required to start an HRUC process relating to such hour of delivery.

“First HRUC Schedule Deadline” means the HRUC Schedule Deadline which immediately follows the time at which the Parties entered into the Transaction and which occurs after the start of the next clock hour.

(B) HRUC Scheduling Requirement: Buyer and Seller shall Schedule each hour’s deliveries of the Product with ERCOT prior to the First HRUC Schedule Deadline unless the time at which the Transaction was entered into is less than thirty (30) minutes prior to the start of the next clock hour, in which case the HRUC Schedule Deadline immediately following the First HRUC Schedule Deadline shall be the applicable scheduling deadline.

(C) DRUC Scheduling Requirement: If a Transaction is entered into prior to that day’s DRUC Schedule Deadline, Buyer and Seller shall Schedule such day’s deliveries of the Product with ERCOT prior to that day’s DRUC Schedule Deadline.”

2. Section 4.1 of the Covered EEI Master Agreement shall be relabeled 4.1(a) and a new Section 4.1(b) shall be added to deal with Seller Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in the ERCOT region:

“4.1(b) Seller Failure in the ERCOT region for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, (i) an amount for

such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and (ii) an amount equal to the ERCOT charges incurred by Buyer, if any, as a result of Seller's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction in the ERCOT region prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."

3. Section 4.2 of the Covered EEI Master Agreement shall be relabeled 4.2(a) and a new Section 4.2(b) shall be added to deal with Buyer Failure with respect to Firm (LD) Transactions and Firm (No Force Majeure) Transactions in the ERCOT region:

"4.2(b) Buyer Failure in the ERCOT region for Firm (LD) Transactions and Firm (No Force Majeure) Transactions. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, (i) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price; and (ii) an amount equal to the ERCOT charges incurred by Seller, if any, as a result of Buyer's failure to Schedule a Firm (LD) or Firm (No Force Majeure) Transaction prior to any applicable DRUC Schedule Deadline or HRUC Schedule Deadline under Section 3.2. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount."