

**AVISTA UTILITIES
(State of Washington)**

Exhibit "A"

Spare Transformer Sharing Agreement

August 31, 2006

Please note that only the Avista Corporation's signature page is included in this Exhibit due to file size considerations. If the other 40 signature pages from participating entities are required, please contact James McDougall at (509) 495-2547 for copies.

tblackburn@brudergentile.com

July 18, 2006

Ms. Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: *Edison Electric Institute on behalf of the Jurisdictional Signatories to the Spare Transformer Sharing Agreement;*
Joint Section 203 Application and Petition for Declaratory Order;
Docket Nos. EC06-____-000 and EL06-____-000**

Dear Secretary Salas:

The Edison Electric Institute ("EEI"), on behalf of the 39 FERC-jurisdictional signatories¹ to the Spare Transformer Sharing Agreement ("Spare Transformer Agreement" or "Agreement") dated March 15, 2006 (the "Applicants")², hereby submits for filing an application for authority to engage in future transfers of jurisdictional facilities under that Agreement pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations; and a petition for a declaratory order concerning the rate treatment of costs that the Applicants incur to implement the Agreement ("Application"). The Commission's grant of Section 203 authority and

¹ The 41 signatories to the Spare Transformer Agreement are listed in Attachment A to the Application. Center Point Energy, Houston Electric LLC and TXU Electric Delivery Company have executed the Spare Transformer Agreement and share in the benefits and responsibilities of the Agreement, but they do not join in this Application because they are not "public utilities" under the Federal Power Act, but instead are subject to limited Federal Energy Regulatory Commission ("Commission") jurisdiction and do not require Section 203 authorization or rate approvals from the Commission with respect to their actions under the Spare Transformer Agreement.

² "Applicant" refers to any FERC-jurisdictional public utility that is a signatory to the Spare Transformer Agreement. The Applicants request that the Commission make its grant of authority and declaratory order applicable to all FERC-jurisdictional public utilities that become parties to the Agreement in the future, as described more fully below.

issuance of the declaratory order are in the public interest because such actions will enhance the reliability of the electric transmission grid by allowing utilities to quickly transfer electric transformers among themselves in the event that transformers are damaged as a result of an act of deliberate destruction and will encourage additional public utilities to execute the Spare Transformer Agreement.

BACKGROUND

EEl's Spare Transformer Equipment Program ("STEP") is designed to assist transmission systems to restore electric service in the event of an act of deliberate destruction. The STEP participants chose to address the need for a sufficient inventory of spare transformers because transformers have a long manufacturing lead time and are manufactured offshore. The STEP represents a continuation of the long history of cooperation among utilities that is exemplified by such mutual assistance agreements as personnel and reserve sharing agreements. The main component of the STEP, the Spare Transformer Agreement, is both a continuation and an extension of those efforts, in that it constitutes a binding obligation on the participants in anticipation of an emergency, rather than a voluntary response to a known event. Participation in STEP is open to all electric utilities, including rural electric cooperatives financed by the Rural Utilities Service, municipal utilities, Federal Power Marketing Administrations and Canadian utilities.

The sharing arrangement embodied in the Spare Transformer Agreement is a prudent approach to making efficient use of the industry's existing spare transformers and fairly allocating the responsibility to acquire a limited number of additional spares, while minimizing duplicative purchases of these costly assets. In brief, the Spare Transformer Agreement requires each party to the Agreement ("Participating Utility") to maintain, and if necessary acquire, a specific number of transformers of various voltages. The number of transformers a Participating Utility must own or commit to acquire in each voltage class is determined based on the aggregate needs of the voltage class and the number of transformers that the Participating Utility has in service in that voltage class. This ensures that the number of transformers owned collectively by the Participating Utilities in a particular voltage class is sufficient to provide spare transformers to any Participating Utility in that voltage class whose transformers are disabled by a "Triggering Event", which is defined as an act of terrorism that destroys or disables one or more substations and results in a declaration of emergency.³

The Spare Transformer Agreement requires a Participating Utility to sell spare transformers to any other qualified Participating Utility in its voltage class that experiences a Triggering Event and exercises its call right with respect to spare

³ Spare Transformer Agreement, § 1.1, Definitions.

transformers. The Spare Transformer Agreement also provides that any Participating Utility may voluntarily transfer spare transformers to a Participating Utility or to a non-participating utility regardless of whether a Triggering Event occurs. Each Participating Utility that disposes of a spare transformer through a "Permitted Transfer" is obligated to obtain a replacement transformer as soon as practicable, but in no event later than 18 months after the spare transformer is disposed of.⁴

The STEP improves the capability of all Participating Utilities to recover from the loss of transformers while reducing the burden on any single utility to acquire spare transformers. The Spare Transformer Agreement provides considerable flexibility for utilities to operate and to utilize assets as they would normally do during the course of business, while at the same time binding utilities to share their committed transformers if a Triggering Event should occur.

SECTION 203 APPLICATION

The Applicants have determined that obtaining advance approval of transfers of transformers pursuant to Section 203 of the Federal Power Act can substantially expedite the process of restoring the transmission grid to operation following a Triggering Event.⁵ In the absence of advance approval, FERC-jurisdictional public utility signatories to the Spare Transformer Agreement would not be able to transfer transformers at prices that exceed the \$10 million jurisdictional minimum under Section 203 without first preparing a Section 203 filing and obtaining authorization for the transfer. Accordingly, they are seeking advance approval of such transfers, subject to a requirement that any public utility that sells transformers pursuant to the Spare Transformer Agreement at a price in excess of \$10 million make an informational filing that sets out the information required by Section 203 within 30 days of closing of the transaction.

PETITION FOR DECLARATORY ORDER

The Applicants also are seeking an order from the Commission that establishes the rate treatment that will be given to expenses incurred pursuant to the Spare Transformer Agreement and that clarifies which transfers of transformers are subject to the Commission's jurisdiction under Section 203. The declaratory order will encourage FERC-jurisdictional public utilities to participate in the Agreement because it will

⁴ See the Spare Transformer Agreement, § 1.1., Definitions, and 3.3, Obligation to Replace.

⁵ Currently, only investor-owned utilities are Participating Utilities, but other utilities may execute the Spare Transformer Agreement in the future. The Applicants include all of the Participating Utilities that are FERC-jurisdictional public utilities.

significantly reduce the potential for controversy concerning the recovery of costs that they will incur. Specifically, the Applicants are seeking assurance that (i) their decisions to incur costs pursuant to the Spare Transformer Agreement are prudent; (ii) they may recover the costs they incur pursuant to single-issue rate filings if they choose to adopt that method of cost recovery; (iii) they may recover through rates the costs of the transformers as established in the Spare Transformer Agreement even if the costs exceed the net book value of the transformers; (iv) public utilities that are subject to retail rate freezes may defer the recovery of the costs incurred under the Agreement until the termination of the freezes; (v) the Commission's review of the rate filings to recover costs incurred pursuant to the Spare Transformer Agreement will be limited to whether the utility has incurred the costs it claims and whether its rates are properly designed to recover such costs; (vi) transfers of spare transformers that are not energized do not require Section 203 authorization; (vii) acquisitions of transformers by jurisdictional public utilities from non-jurisdictional utilities do not require Section 203 authorization; and (viii) the Commission's declaratory order and Section 203 authorization will apply to subsequent FERC-jurisdictional public utility signatories that notify the Commission that they have executed the Spare Transformer Agreement.

This filing includes the Section 203 Application and supporting exhibits, including the Spare Transformer Agreement, and the Petition for Declaratory Order. Enclosed with the Application is a check in the amount of \$19,890.00 payable to the Treasurer of the United States, and electronic and paper versions of a Notice of Filing suitable for publication in the Federal Register.

The following documents are submitted with this filing:

1. The Section 203 Application and Petition for Declaratory Order;
2. The Spare Transformer Agreement (Exhibit I to the Section 203 Application);
3. A list of the signatories to the Spare Transformer Agreement (Attachment A);
4. A list of the entities that participated in the development of the Spare Transformer Equipment Program (Attachment B);
5. A summary of the Principal Terms of the Transformer Sharing Agreement (Attachment C);
6. A map showing the geographic scope of the transmission systems participating in the Spare Transformer Equipment Program (Attachment D);

7. A list of representatives of the Applicants that EEI requests the Commission place on the service list (Attachment E).
8. A check in the amount of \$19,890.00
9. A form of notice of filing, suitable for publication in the *Federal Register* (both printed copy and electronic copy on diskette) (Attachment F).

We thank the Commission for its consideration of this filing.

Very truly yours,

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**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**EDISON ELECTRIC INSTITUTE ON BEHALF OF
THE JURISDICTIONAL SIGNATORIES TO THE
SPARE TRANSFORMER SHARING AGREEMENT**

**DOCKET Nos. EC06-___-000
AND EL06-___-000**

**JOINT APPLICATION FOR
AUTHORIZATION FOR TRANSFERS OF JURISDICTIONAL FACILITIES
UNDER SECTION 203 OF THE FEDERAL POWER ACT AND
PETITION FOR DECLARATORY ORDER**

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July 18, 2006

TABLE OF CONTENTS

I.	Introduction	2
A.	The Spare Transformer Equipment Program	3
B.	The Pooled Inventory Management Program	8
C.	The Applicants' Request for Commission Action	9
II.	Request for Authorization for Transfers of Jurisdictional Facilities under Section 203.	10
A.	Introduction	10
B.	The Public Interest	13
C.	Request For Consideration Within Sixty Days	15
D.	Other Commission Filings	16
E.	Information Required By Section 33.2	16
1.	18 C.F.R. §§ 33.2(a) Through (i)	16
a.	Principal Business Address (18 C.F.R. § 33.2(a))	17
b.	Communications (18 C.F.R. § 33.2(b))	17
c.	Description of the Applicants (Exhibits A though F, 18 C.F.R. § 33.2(c))	18
d.	Description of the Jurisdictional Facilities Owned, Operated or Controlled by the Applicants (Exhibit G, 18 C.F.R. § 33.2 (d))	19
e.	Description of Proposed Transaction (Exhibit H, 18 C.F.R. § 33.2(e))	20
f.	All Contracts Related to the Proposed Transaction (Exhibit I, 18 C.F.R. § 33.2(f))	20
g.	Statement that the Proposed Transaction Is in the Public Interest (Exhibit J, 18 C.F.R. § 33.2(g))	21
h.	Map of Physical Property (Exhibit K, 18 C.F.R. § 33.2(h))	21
i.	List of Other Required Filings in Connection with the Proposed Transaction (Exhibit L, 18 C.F.R. § 33.2(i))	21
j.	Demonstration that the Transaction Will Not Result in Cross-Subsidization (Exhibit M, 18 C.F.R. §33.2(j))	21
F.	Information on Horizontal Competitive Impacts (Section 33.3)	21
G.	Information on Vertical Competitive Impacts (Section 33.4)	22
H.	Proposed Accounting Entries (Section 33.5)	22
I.	Form of Notice (Section 33.6)	22
J.	Verification (Section 33.7)	22
III.	Petition for Declaratory Order	22

A. The Costs Incurred Pursuant to the Spare Transformer Agreement Are Prudently Incurred.....	25
B. The Recovery of Spare Transformer Agreement Costs Pursuant to Single-Issue Ratemaking Is Consistent with Commission Policy.....	27
C. The Recovery of Acquisition Premiums for Transformers Purchased in Response to a Triggering Event Is Just and Reasonable.	29
D. FERC-Jurisdictional Public Utilities that Are Subject to Retail Rate Freezes Should Be Permitted to Defer Recovery of the Costs of Complying with the Spare Transformer Agreement.	31
E. The Commission’s Review of the Inclusion in Rates of Costs Incurred Pursuant to the Spare Transformer Agreement Should Be Limited to a Review of Whether the FERC-Jurisdictional Public Utility Incurred the Costs and Whether the Rates Are Properly Designed to Recover those Costs.....	32
F. Transfers of Spare Transformers that Are Not Energized Do Not Require Authorization under FPA Section 203.	33
G. Acquisitions by Public Utilities of Non-Jurisdictional Utilities’ Spare Transformers Do Not Require Authorization Under FPA Section 203.....	34
H. The Commission’s Order in this Proceeding Should Apply to Public Utilities that Notify the Commission that They Have Executed the Spare Transformer Agreement after the Commission Issues Its Order.....	36
IV. Conclusion	36

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**EDISON ELECTRIC INSTITUTE ON BEHALF OF
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**DOCKET Nos. EC06-____-000
AND EL06-____-000**

**JOINT APPLICATION FOR AUTHORIZATION OF TRANSFERS OF
JURISDICTIONAL FACILITIES UNDER SECTION 203 OF THE
FEDERAL POWER ACT AND PETITION FOR DECLARATORY ORDER**

The Edison Electric Institute (“EEI”), on behalf of the 39 FERC-jurisdictional public utility signatories¹ to the Spare Transformer Sharing Agreement (“Spare Transformer Agreement” or “Agreement”) dated March 15, 2006 (the “Applicants”),² submits this application (“Application”) pursuant to Section 203 of the Federal Power Act (“FPA”)³ and Part 33 of the Commission’s regulations⁴ for approval of the future transfer by any FERC-jurisdictional public utility party to the Spare Transformer Agreement of

¹ The signatories to the Spare Transformer Agreement are listed in Attachment A.

² Center Point Energy, Houston Electric LLC and TXU Electric Delivery Company have executed the Spare Transformer Agreement and share in the benefits and responsibilities of the Agreement, but they do not join in this Application because they are not “public utilities” under the Federal Power Act but instead are subject to limited Federal Energy Regulatory Commission (“Commission”) jurisdiction and do not require Section 203 authorization or rate approvals from the Commission with respect to their actions under the Spare Transformer Agreement.

³ 16 U.S.C. § 824b (as amended effective February 8, 2006).

⁴ 18 C.F.R. Part 33 (2005), as modified by 18 C.F.R. Parts 2 and 33 Transactions Subject to FPA Section 203, Order No. 669, 113 FERC ¶ 61,315 (2005), 71 Fed. Reg. 1348 (Jan. 6, 2006) (effective February 8, 2006), *order on reh’g*, Order No. 669-A, 115 FERC ¶ 61,197 (2006), 71 Fed. Reg. 28,422 (May 16, 2006) (effective June 15, 2006); *see also Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. and Regs. ¶ 31,111 (2000) (“Order No. 642”), *order on reh’g*, 94 FERC ¶ 61,289 (2001) (“Order No. 642-A”).

transformers pursuant to that Agreement, including transfers of transformers by public utilities to their affiliates. In addition, the Applicants request that the Commission issue a declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure⁵ granting certain assurances with respect to the recovery in transmission rates of the costs that the Applicants will incur in connection with participation in the Spare Transformer Agreement, clarifying the applicability of Section 203 of the Federal Power Act to transfers of spare transformers, and making the Section 203 authorization and declaratory order applicable to additional public utilities as they execute the Agreement, upon notice to the Commission.

I. INTRODUCTION

EEI is the trade association for shareholder-owned electric companies. It serves international affiliates and industry associates worldwide. EEI's U.S. member companies serve 97 percent of the ultimate customers in the shareholder-owned segment of the industry and nearly 71 percent of all electric utility ultimate customers in the nation. EEI members own approximately 60 percent of the nation's circuit miles of transmission. EEI member companies have a responsibility for and a strong commitment to maintaining bulk electric reliability.

In response to the Commission's statements emphasizing the need for innovative approaches to system security and reliability,⁶ a group of electric utilities considered the

⁵ 18 C.F.R. § 385.207.

⁶ See *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶ 61,299 (2001).

ability of the transmission grid to withstand terrorist attack and determined that industry efforts should be focused on equipment that involves substantial manufacturer lead time and transportation time to replace.

A. THE SPARE TRANSFORMER EQUIPMENT PROGRAM

In September 2004, EEI's Executive Committee requested that EEI study the acquisition of a spare transformer inventory for use by the electric industry in the event of coordinated, deliberate destruction of utility substations, to ensure that the electric industry has sufficient capability to restore electric service to customers. EEI engaged in outreach to EEI members, other electric utility trade associations including the American Public Power Association, the National Rural Electric Cooperative Association and the Canadian Electricity Association, as well as Federal Power Marketing Administrations, the North American Electric Reliability Council and the Electric Power Research Institute, to develop a team that could effectively conduct this analysis.⁷ After several months of discussions among EEI and industry representatives, a broad group of industry participants decided that this could best be accomplished by having individual utilities commit to acquire, to store, and to maintain transformers, and to share them if called upon to do so. Consistent with that decision, the owners of a significant portion of the transmission grid have established the Spare Transformer Equipment Program ("STEP"). STEP is a coordinated, industry-wide program to increase the electric industry's inventory of spare transformers in order to ensure that the electric

⁷ A list of the participants in the discussions that ultimately resulted in the STEP is included in Attachment B.

industry has sufficient capability to restore service in the event of coordinated, deliberate destruction of utility substations. Any electric utility that owns transmission transformers in the United States or Canada is eligible to participate in the program.⁸ A key part of STEP is the Spare Transformer Agreement, which establishes the terms on which the signatories (termed the "Participating Utilities") will maintain inventories of spare transformers and transfer them among themselves in the event the transformers of a Participating Utility are damaged or destroyed by a "Triggering Event," which is defined as an act of terrorism⁹ that destroys or disables one or more substations and results in a declaration of an emergency. The Spare Transformer Agreement, which is attached to this Application as Exhibit I, is a binding contract that was negotiated through a six-month open and collaborative process by representatives of more than 50 utilities, including EEI member companies and representatives from the American Public Power Association, the National Rural Electric Cooperative Association, the North American Electric Reliability Council, the Electric Power Research Institute, and

⁸ Electric utilities that are eligible to participate include investor-owned utilities, government-owned utilities and rural electric utilities. Although at this time all Participating Utilities are investor-owned utilities, the STEP participants hope that electric cooperatives, government-owned utilities and Canadian utilities will join the STEP. EEI and the Participating Utilities are continuing to engage in outreach with the American Public Power Association, the National Rural Electric Cooperative Association, individual electric cooperatives and government-owned utilities, including Federal Power Marketing Administrations, to encourage them to join the STEP.

⁹ Spare Transformer Agreement, § 1.1. The definition of "Triggering Event" references the Homeland Security Act of 2002, 6 U.S.C. § 101(15) (2006, Supp.), which defines "terrorism" as any act that is "dangerous to human life or potentially destructive of critical infrastructure or key resources," is a violation of law, and "appears to be intended -- (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of government by mass destruction, assassination or kidnapping."

Federal Power Marketing Administrations. Forty-one Participating Utilities have executed the Spare Transformer Agreement.¹⁰

A summary of the Spare Transformer Agreement is included as Attachment C. In brief, the Spare Transformer Agreement requires each Participating Utility to maintain, and if necessary to acquire, a specific number of transformers of various voltages that is determined based on the number of transformers of each voltage that the Participating Utility has in service. The aggregate needs of the voltage class and the number of transformers maintained across a voltage class are calculated to provide sufficient spare transformers to restore service to a Participating Utility whose transformers are disabled. Each Participating Utility commits to sell its spare transformers to any other qualified Participating Utility in its voltage class pursuant to a properly exercised call right at a set purchase price upon the occurrence of a Triggering Event. In addition, Participating Utilities may voluntarily transfer spare transformers to other utilities that have lost transformers and with whom they have formal or informal sharing or mutual assistance agreements, regardless of whether the transferee is a Participating Utility or the loss was caused by a Triggering Event.¹¹ Consequently, the STEP and the Spare Transformer Agreement can enhance the reliability of the transmission system of the entire nation.

¹⁰ Participating Utilities in the Spare Transformer Agreement own more than 60% of the jurisdictional bulk transmission system. A map showing the geographic scope of the utilities that have executed the Spare Transformer Agreement is included as Attachment D.

¹¹ See the Spare Transformer Agreement, § 1.1., Definitions.

The Spare Transformer Agreement requires each Participating Utility, by June 30, 2008, to have in its inventory a sufficient number of transformers to meet its initial Required Obligation. June 2008 was selected to provide sufficient time for required regulatory approvals, including this Application, and to permit Participating Utilities to meet the 18-month lead time to obtain the required spare transformers. For a similar reason, a utility that wishes to withdraw from the Agreement must provide two years' notice of withdrawal.

The STEP utilities will determine the number of spare transformers needed in each class by applying a formula that measures the number of transformers needed to restore the most vulnerable system to an "N-0" status, in the event that its five most critical substations in any voltage class in which it chooses to participate are inoperable. Each Participating Utility is required to maintain a share of the required number of transformers in each class in which it participates, determined by the Participating Utility's share of the MVA of all transformers in that class and its share of the transformer MVA that is needed to restore its system.¹² The Equipment Subcommittees for the various voltage classes of transformers have not yet determined the precise number of transformers of each voltage class that will be needed, and those numbers may change as additional utilities execute the Spare Transformer Agreement. However, based on present projections, the current Participating Utilities anticipate acquiring no more than 31 transformers to meet their obligations under the Spare

¹² Transformer Sharing Agreement, § 1.1, Definitions.

Transformer Agreement. The number of transformers of each voltage class that the Applicants currently anticipate must be purchased is shown in the following table, assuming that no additional utilities execute Spare Transmission Agreements:

Voltage Class (kV)	Number of Participating Utilities with Transformers in Each Voltage Class	Transformers Needed In Class	Transformers that Must Be Purchased
500-230	17	10 - 15	3 - 5
345-230	4	8 - 10	1
345-161	5	3 - 5	1
345-138	12	15 - 20	3 - 5
345-115	7	5 - 10	1
230-138	10	8 - 10	1 - 2
230-115	14	8 - 10	1
230-069	5	10 - 15	7 - 9
138-069	8	5 - 10	3 - 6
Total		72 - 105	21 - 31

The Participating Utilities anticipate that if all current projections are accurate, the purchases would require an expenditure in the range of approximately \$50 - \$75 million, spread among the 43 Participating Utilities. The costs of the transformers range from approximately \$500,000 for 200 MVA 138 kV transformers to approximately \$11,000,000 for 2,000 MVA 500 kV transformers.

The Required Obligation will be recalculated annually to account for changes in load or in the transmission system, the addition of new Participating Utilities under the Agreement, and any withdrawal of Participating Utilities. Because some utilities that join may already maintain more spare transformers than are required under the Spare

Transformer Agreement, the addition of Participating Utilities will not always increase the obligation to purchase transformers, and in some cases it may reduce the group's purchase obligations. In addition, the obligations to maintain spare transformers may change if the Participating Utilities adjust the methodology that establishes the Required Obligation, which can only be done by unanimous consent of the Participant Utilities.

The sharing arrangement implemented by the Spare Transformer Agreement is a prudent approach to make efficient use of the industry's existing spare transformers and to allocate fairly the responsibility to acquire a limited number of additional spares, while minimizing duplicative purchases of these costly assets. This program improves the recovery capability of all Participating Utilities while reducing the burden on any single utility to acquire spare transformers. The Spare Transformer Agreement provides considerable flexibility for utilities to operate and to utilize assets as they would normally do during the course of business, while at the same time binding utilities to share their committed transformers if a Triggering Event should occur.

EEl has performed and continues to perform extensive outreach to key utilities among the various classes of potential participants. EEl believes that a Commission order approving the transfers of transformers and providing the assurances sought in the Petition for Declaratory Order will have a significant effect on the willingness of other utilities to execute the Spare Transformer Agreement because it will reduce the regulatory uncertainties associated with the STEP.

B. THE POOLED INVENTORY MANAGEMENT PROGRAM

In order to cost-effectively improve reliability, utilities with transformers of the same voltage class sometimes agree to share the cost of acquiring and maintaining

spare transformers. This is particularly cost-effective if a utility does not individually have enough transformers of a voltage class to warrant purchasing a spare transformer on its own. The Participating Utilities have concluded that it would be valuable to extend and to formalize this practice by developing a more formal joint acquisition program for spare transformers.

The Pooled Inventory Management ("PIM") program currently manages joint acquisitions for the nuclear power industry, specializing in spare parts with long manufacturing lead times. PIM is a non-profit Delaware membership corporation with 25 members. PIM has agreed to extend the scope of its spare parts program to include transformers. Through PIM, a utility can join with a group of other utilities to acquire a spare transformer. Each participant in the joint acquisition would pay for a portion of the acquisition costs and would pay PIM a fee for maintenance and administrative costs. The PIM program therefore provides participants, and in particular smaller electric utility participants, a cost-effective way to improve system reliability. Participants in PIM also can execute the Spare Transformer Agreement, using the jointly-owned transformers that they own under the PIM program to meet their obligations under the Agreement. A PIM participant who sells a transformer pursuant to the Spare Transformer Agreement would pay the other joint owners for their shares of the transformer.

C. THE APPLICANTS' REQUEST FOR COMMISSION ACTION

The Applicants seek certain regulatory and cost recovery assurances from the Commission. In particular, the Applicants seek:

- i) advance approval of transfers of the spare transformers under Section 203, including transfers involving affiliates;

- ii) clarification that transfers of transformers that have not been energized and transfers of spare transformers from non-jurisdictional electric utilities to jurisdictional public utilities are not subject to the Commission's jurisdiction under Section 203 of the Federal Power Act;
- iii) a declaratory order providing assurances that the Applicants will recover (a) their costs of participating in and administering the Spare Transformer Agreement, including the costs of acquiring transformers to maintain the inventory levels established in the Spare Transformer Agreement, the costs of purchasing spare transformers from other signatories at the price established in the Spare Transformer Agreement, and (b) the costs of purchasing spare transformers pursuant to the PIM program; and
- iv) a declaration that the approvals granted in this proceeding also are applicable to FERC-jurisdictional public utilities that execute the Spare Transformer Agreement after the date of the Commission's order.

II. REQUEST FOR AUTHORIZATION FOR TRANSFERS OF JURISDICTIONAL FACILITIES UNDER SECTION 203.

A. INTRODUCTION

The Applicants request authorization pursuant to Section 203 of the Federal Power Act to make future transfers of transformers pursuant to the Spare Transformer Agreement. In addition, the Applicants request that the Commission state that its authorization will apply to additional public utilities when they execute the Agreement

and become Participating Utilities, upon notice to the Commission.¹³ Section 203 of the Federal Power Act provides that “No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof with a value in excess of \$10 million... without first having secured an order of the Commission authorizing it to do so.”¹⁴ Section 203 does not apply to all transfers of transformers contemplated by the Spare Transformer Agreement because the cost of most transformers does not exceed the \$10 million jurisdictional minimum. However, the \$10 million jurisdictional minimum may be met when a public utility disposes of a large transformer or disposes of several smaller transformers that together cost more than \$10 million.

If an Applicant were required to seek Section 203 approval of the transfer of a transformer when a Triggering Event occurs, the time required to prepare and to file a Section 203 application and to receive authorization could significantly delay the purchasing utility’s ability to place its transmission system back in operation. The pre-authorization of the transfer of spare transformers will help to ensure that a disabled utility can restore its system to operation as quickly as possible. The Applicants request

¹³ In Section III of this Application, the Applicants request clarification of two issues that are presented by Section 203. First, it is not clear from the Commission’s orders whether Section 203 approval is required for the transfer of spare transformers that have not been energized. Second, it is not clear whether the acquisition of a spare transformer by a jurisdictional public utility from a non-jurisdictional utility requires Section 203 approval. The Applicants seek clarification that in both instances, the Commission does not have jurisdiction over the transfers under Section 203 of the Federal Power Act.

¹⁴ Section 203(a)(1)(A); 16 U.S.C. 824b. *See also* Section 203(a)(1)(B) applying to consolidations of facilities subject to the jurisdiction of the Commission.

advance approval, based on the information provided in this Application, so that Participating Utilities may transfer necessary equipment without delay and without violating the requirements of the FPA. In addition, the Commission's grant of advance approval of jurisdictional transfers of transformers will provide regulatory certainty that will encourage additional utilities to join the program and thereby increase the scope of the STEP.

Advance approval of transfers of jurisdictional facilities is consistent with Commission policy. The Commission has previously granted Section 203 authorizations prior to the time when a specific transaction is contemplated where such authorizations are consistent with the public interest. *See Mirant Corporation and its Public Utility Subsidiaries*, 115 FERC ¶ 62,075 (April 22, 2006); *Boston Generating, LLC, et al.*, 113 FERC ¶ 62,232 (2005); and *La Paloma Holding Company, LLC, et al.*, 112 FERC ¶ 61,052 (2005).¹⁵ The Applicants hereby commit to making informational filings to provide the information required by Part 33 of the Commission's regulations

¹⁵ The Commission has granted pre-authorization for certain transactions involving interstate natural gas pipeline facilities under the Natural Gas Act ("NGA"). 15 U.S.C. § 717, et seq. For example, under Section 7(c) of the NGA, a natural gas company generally is required to obtain Commission approval -- known as a certificate of public convenience and necessity -- to construct any jurisdictional natural gas transmission facilities in interstate commerce. However, the Commission has adopted regulations that allow all interstate pipelines to apply for a "blanket certificate" that automatically authorizes them to construct certain facilities -- specified by regulation -- without additional Commission approval. The pipeline reports the facility construction activity after the fact. 18 C.F.R. § 157.207 (2005). The current blanket certificate regulations allow construction of certain facilities valued at up to \$8 million without any prior Commission review. 18 C.F.R. § 157.208(d) (2005). In addition, companies that have obtained blanket certificates are automatically authorized, when necessary to restore service in an emergency, to acquire and operate certain eligible facilities. 18 C.F.R. § 157.208(a) (2005). The "blanket" FPA Section 203 pre-authorization, with the terms of specific transactions between Participating Utilities established by the Spare Transformer Agreement and with after the fact filings and Commission review, are conceptually analogous to the NGA blanket certificate procedures.

within 30 days of the date of closing of any FERC-jurisdictional transfer under the Agreement, and further informational filings within six months after the closing of such transactions, when the final terms of the sales have been established consistent with the terms of the Agreement.

The Applicants request waiver of certain of the provisions of Part 33 of the Commission's regulations. The requirements for which waiver is sought are either not applicable to the transfers contemplated by the Spare Transformer Agreement or are not relevant to whether the transfers are consistent with the public interest.

B. THE PUBLIC INTEREST

The proposed transactions are consistent with the public interest and do not raise affiliate issues, present an opportunity for cross-subsidization or pledge or encumber utility assets for the benefit of an associate company. The Commission generally considers three factors – the effect of a transaction on (i) competition, (ii) rates and (iii) regulation – in determining whether a proposed transaction is consistent with the public interest.¹⁶ The proposed transaction satisfies each of the three “public interest” factors as follows:

- i) The proposed transactions will have no adverse effect on competition. The Spare Transformer Agreement does not involve the sale of generation facilities and therefore will not increase any signatory's market share of generation facilities. The transfer of transformers also will not adversely

¹⁶ See Section 2.26(b) of the Commission's Regulations, 18 C.F.R. § 2.26(b).

affect transmission service because all of the Applicants provide transmission service pursuant to their own Open Access Transmission Tariffs or pursuant to ISO/RTO tariffs and because the transfers would simply restore the status quo by allowing the purchasers to expedite the process of placing their transmission systems back in service.

- ii) The proposed transactions will have no adverse effect on rates. The Applicants are seeking in this filing a Commission order declaring that the costs incurred under the Spare Transformer Agreement are prudently incurred and recoverable in rates, but the recovery of the costs associated with the Spare Transformer Agreement will be addressed in separate rate filings under Section 205 of the Federal Power Act. In addition, the expenditures of public utilities pursuant to the Spare Transformer Agreement are in the public interest because they enhance system reliability. Furthermore, because the Participating Utilities share the burden of acquiring and making available transformers that provide the reliability assurances under the Agreement, each Participating Utility will achieve greater reliability at a lower cost than would incur if it were to purchase on its own sufficient transformers to meet the criteria specified in the Spare Transformer Agreement. Thus, any rate impacts under the Spare Transformer Agreement are more than offset by the value of the reliability gains provided.
- iii) The proposed transactions also will have no adverse effect on regulation. The transfer of transformers does not affect any Applicant's jurisdictional

status and all jurisdictional Applicants will continue to be subject to the Commission's regulation after the proposed transactions. The proposed transactions also do not affect the Securities and Exchange Commission's or state regulatory authorities' regulation of the Applicants and their affiliates.

The proposed transactions also present no opportunity for affiliate abuse because the Spare Transformer Agreement establishes that the sales price is, at the seller's election, either the net book value or the replacement cost, plus the seller's loadout and transportation costs and tax liability attributable to the sale. Therefore, no cross subsidization between affiliates can occur.

Furthermore, it is reasonable for the purchaser to pay the replacement cost of the transformer, if elected by the seller. Because the purchasing utility's ratepayers benefit from the transaction, they should bear the costs of replacing the transformer, rather than placing that cost burden on the ratepayers of the selling utility, who derive no benefit from the sale.

Finally, the Spare Transformer Agreement does not place any encumbrance on utility assets, because utilities are free to deploy their transformers for their own use or voluntarily transfer them to another utility with which they have a formal or informal sharing or mutual assistance agreement as needed, subject to the obligation to replace the transformers consistent with each utility's Required Obligations.

C. REQUEST FOR CONSIDERATION WITHIN SIXTY DAYS

The Commission has indicated in Order 642 that the processing time for Section 203 applications that do not require a competitive analysis and have no impact on

market power is sixty days.¹⁷ This filing does not require a competitive analysis and does not implicate any of the Commission's Section 203 regulatory concerns related to competition, rates or regulation. Therefore, the Applicants request that the Commission act on its Application within the sixty day period as indicated by Order No. 642 or no later than August 17, 2006. Receipt of the Commission's approval is necessary to give the Applicants the regulatory certainty they need to begin undertaking the financial commitments and to seek the state and local regulatory approvals needed to implement the Agreement.

D. OTHER COMMISSION FILINGS

Other than the informational filings upon a jurisdictional transfer and the filings to notify the Commission of new public utility signatories as described elsewhere in this filing, no other regulatory filings at the Commission are required for authorization of the transactions for which approval is sought.

E. INFORMATION REQUIRED BY SECTION 33.2

1. 18 C.F.R. §§ 33.2(a) THROUGH (i)

In support of the Application and in conformance with the requirements of Section 33.2 of the Commission's Regulations, the Applicants submit the following:

¹⁷ Order No. 642 at 31,876.

a. Principal Business Address (18 C.F.R. § 33.2(a))

The Applicants' principal business addresses are included in Attachment A. The names and principal business addresses of the parties to FERC-jurisdictional transfers of spare transformers will be provided in post-closing informational filings.

b. Communications (18 C.F.R. § 33.2(b))

Communications should be directed to the following persons, whose names should be included on the official service list in this docket:

EEI

James P. Fama
Executive Director
Barbara A. Hindin
Associate General Counsel
Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
Telephone: 202/508-5000
Facsimile: 202/508-5759
E-Mail: jfama@eei.org
bhindin@eei.org

and

Thomas L. Blackburn
Bruder, Gentile & Marcoux, L.L.P.
1701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20006
Telephone: 202/296-1500
Facsimile: 202/296-0627
E-Mail: tblackburn@brudergentile.com

Contact information for each Applicant is provided in Attachment E to this filing. The Applicants ask that the Commission add the company representatives listed on Attachment E to the official service list.¹⁸

c. Description of the Applicants (Exhibits A through F, 18 C.F.R. § 33.2(c))

A description of the Applicants is provided in Section I and Attachment A. Descriptions of the individual applicants associated with any FERC-jurisdictional consummated transaction will be provided in a post-closing informational filing.

The Applicants request waiver or deferral of the remaining requirements of Section 33.2(c) as follows:

- i) Business activities of the Applicants and corporate and regulatory authorizations (Exhibit A): Waiver is appropriate because the transactions are limited to the transfer of transformers and do not raise issues with respect to the Applicants' business activities.
- ii) Information about energy affiliates and subsidiaries (Exhibit B): Waiver is appropriate because the transactions will have no impact on affiliates or subsidiaries or competition.
- iii) Pre-and post-closing organizational charts (Exhibit C): Waiver is appropriate because the transactions will have no impact on corporate organization.

¹⁸ Pursuant to Rule 203(b)(3), the Applicants respectfully ask to place multiple names on the Secretary's official service list so that each of the Applicants can receive timely notice of any actions taken by the Commission and by the parties to this proceeding.

- iv) Joint ventures, alliances, tolling arrangements, transfers to RTOs, etc.
(Exhibit D): Waiver is appropriate because the only facilities transferred are transformers and the transaction will have no impact on such arrangements.
- v) Common officers and directors (Exhibit E): Waiver and deferral are appropriate because the sale or other disposition of the utility is not at issue. Any common officers and directors of utilities involved in FERC-jurisdictional transfers of spare transformers will be identified in the post-closing informational filing.
- vi) Description and location of wholesale power customers (Exhibit F):
Waiver is appropriate because the only facilities transferred are transformers and the transactions will not have any effect on wholesale customers other than the possible change in the customers' rates, which will be addressed in Section 205 filings.

d. Description of the Jurisdictional Facilities Owned, Operated or Controlled by the Applicants (Exhibit G, 18 C.F.R. § 33.2 (d))

The Applicants request waiver and deferral of the requirement to provide a description of applicant's jurisdictional facilities because the only facilities to be transferred are transformers. A description of the transformers that are included in any FERC-jurisdictional transaction will be included in the post-closing informational filing.

e. Description of Proposed Transaction (Exhibit H, 18 C.F.R. § 33.2(e))

The Applicants request a partial deferral of the requirement to provide a narrative description of the identities of parties and facilities affected by the transaction. The transaction is described in general terms in Section II.A of this filing. Details of any specific FERC-jurisdictional transfer will be provided in the post-closing informational filing. The information provided at that time will include the estimated sale price for the transformers, the basis for the calculations of the sale price, and the effect of the transaction on jurisdictional facilities and securities (18 C.F.R. §§ 33.2(e)(3) and (4)). The sale price will be based on either the seller's book cost or the market price for a replacement transformer, at the seller's option. The final sale price will be provided in a second informational filing, made within 6 months of closing, which is the date the Spare Transformer Agreement establishes for the final determination of the sale price. The seller will provide its cost support for its depreciated book cost or replacement cost in the 6-month filing. In addition, Applicants anticipate filing journal entries showing the closing costs, consistent with the Commission's past orders under Section 203.

f. All Contracts Related to the Proposed Transaction (Exhibit I, 18 C.F.R. § 33.2(f))

The Spare Transformer Agreement is provided in Exhibit I. Individual contracts related to specific FERC-jurisdictional sales under the Spare Transformer Agreement will be provided in the post-closing informational filings.

g. Statement that the Proposed Transaction Is in the Public Interest (Exhibit J, 18 C.F.R. § 33.2(g))

A statement showing that the transaction is in the public interest is included in Section II.B.

h. Map of Physical Property (Exhibit K, 18 C.F.R. § 33.2(h))

The Applicants request waiver of the requirement to provide a map of physical properties since transformers are moveable and this information will not assist the Commission in the review of the transaction.

i. List of Other Required Filings in Connection with the Proposed Transaction (Exhibit L, 18 C.F.R. § 33.2(i))

The Applicants request deferral of the requirement to provide information concerning licenses or other approvals from regulatory bodies. This information will be provided in the post-closing informational filing.

j. Demonstration that the Transaction Will Not Result in Cross-Subsidization (Exhibit M, 18 C.F.R. §33.2(j))

A general statement that the transactions will not result in cross-subsidization or a pledge or encumbrance of assets for the benefit of an associate company is included in Section II.B. Exhibit M information concerning specific FERC-jurisdictional transactions will be included in the post-closing informational filing.

F. INFORMATION ON HORIZONTAL COMPETITIVE IMPACTS (SECTION 33.3)

No information is required because the transactions will not have horizontal competitive impacts.

G. INFORMATION ON VERTICAL COMPETITIVE IMPACTS (SECTION 33.4)

No information is required because the transactions will not have vertical competitive impacts.

H. PROPOSED ACCOUNTING ENTRIES (SECTION 33.5)

The Applicants request deferral of this requirement. The proposed accounting entries will be included in the post-closing informational filing.

I. FORM OF NOTICE (SECTION 33.6)

The form of notice is included in Attachment F to this pleading.

J. VERIFICATION (SECTION 33.7)

The Applicants request deferral of this requirement. The verification will be included in the post-closing informational filing.

III. PETITION FOR DECLARATORY ORDER

The Applicants request the Commission to issue a declaratory order holding that:

- i) The decisions by each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement to enter into the Agreement, to purchase or to sell transformers to meet its obligations under the Agreement, to jointly own spare transformers pursuant to the PIM program and to purchase or to sell transformers in the event of a Triggering Event under the Agreement, including decisions to make transfers between affiliates, all are prudent.
- ii) The costs that each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement incurs to comply with its obligations under the Agreement may be recovered pursuant to single-issue ratemaking

proceedings, at the Applicant's option.¹⁹ Such costs include the initial costs to purchase transformers to meet obligations under the Agreement and the costs incurred to purchase transformers in the event of a Triggering Event, including the costs of transfers between affiliates.²⁰

- iii) FERC-jurisdictional public utility signatories to the Spare Transformer Agreement may recover in their rates the costs they incur pursuant to the Spare Transfer Agreement to purchase transformers in response to a Triggering Event, including costs in excess of the net book value of the purchased transformers.
- iv) Each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement that is operating under a retail rate moratorium may use a deferred cost recovery mechanism that allows it to commence the recovery of costs associated with the Spare Transformer Agreement in FERC-jurisdictional rates at the end of the retail rate moratorium.
- v) The Commission's review of a FERC-jurisdictional rate filing to recover costs associated with the Spare Transformer Agreement will be limited to

¹⁹ Public utilities also could recover their costs under the Agreement through filings to increase their stated rates or inclusion of their costs in annual cost determinations under formula rates.

²⁰ The single-issue rate filing will recover only the utility's net costs of compliance. For instance, if a utility sells a transformer to another utility at its replacement cost, the selling utility would not need to make a rate filing in connection with the purchase of a replacement transformer because the cost of the replacement transformer would be borne by the purchaser, and not by the ratepayers. Similarly, if a utility's transformer is destroyed and a portion of the cost is recovered through insurance proceeds or salvage value, the rate filing will recover the utility's net cost of replacing the transformer rather than its gross cost.

a review of whether the public utility has incurred the costs claimed and whether the adder is properly designed to recover the revenue requirement.

- vi) Transfers by FERC-jurisdictional public utilities of transformers that have not been energized do not require Section 203 authorization because such transformers are not subject to the Commission's jurisdiction since they do not provide transmission service in interstate commerce.
- vii) FERC-jurisdictional public utilities do not need Section 203 authorization to acquire transformers from non-jurisdictional utilities pursuant to the Spare Transformer Agreement because such transfers do not merge or consolidate the public utility's facilities with those of the selling utility.
- viii) FERC-jurisdictional public utilities that execute the Spare Transformer Agreement after the date of this filing must file notices with the Commission informing it that they are signatories. Upon such filing, those utilities will be authorized under Section 203 of the Federal Power Act to transfer transformers pursuant to the Spare Transformer Agreement on the same terms as the Applicants and also will be entitled to the same rate treatment as the Applicants.

Three of the determinations that the Applicants are seeking in this proceeding involve matters that the Commission recently recognized in its Notice of Proposed

Rulemaking (“NOPR”) on transmission construction incentives²¹ that are necessary to promote needed investments in the transmission grid. These determinations are: (1) advance approval for prudent reliability-related expenditures; (2) deferred cost recovery for utilities that are subject to retail rate moratoriums; and (3) single issue ratemaking. In furtherance of the policies embodied in the NOPR, the Commission should recognize the potential benefits afforded by the Transformer Sharing Agreement and grant the rate assurances and regulatory certainty necessary to make the STEP and future programs a success.

A. THE COSTS INCURRED PURSUANT TO THE SPARE TRANSFORMER AGREEMENT ARE PRUDENTLY INCURRED.

The Commission should hold that the costs that Applicants incur in implementing the Spare Transformer Agreement and in participating in the PIM program are prudently incurred for two reasons: first, because the costs will increase the reliability of the Applicants’ transmission systems, and second, because the Agreement and the PIM program provide substantial cost savings over alternative methods of achieving similar system restoration capability.

The Commission should hold that the costs of implementing the Spare Transformer Agreement and participating in PIM are prudently incurred because the Agreement and the PIM program enhance system reliability. As explained in Section I above, recent events have demonstrated the need for improvements in the nation’s

²¹ *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, Docket No. RM06-4-000, 113 FERC ¶ 61,182 (2005).

ability to maintain electric service in the event of terrorist attacks. In response, the Participating Utilities took it upon themselves to develop a cost-effective and equitable means to maintain a pool of spare transformers and to share those transformers among themselves in the event a terrorist act disables a transformer of a Participating Utility. The availability of spare transformers is of significant importance in improving system reliability.

The Commission also should hold that the costs incurred pursuant to the Spare Transformer Agreement and the PIM program are prudently incurred because those costs are substantially less than the costs that the Participating Utilities would incur if they individually were to purchase spare transformers to obtain the level of reliability provided for by the Agreement. If each Participating Utility were required to maintain a sufficient number of spare transformers to ensure that it could keep its system in operation despite losing its five most critical transformers in any voltage class, it would be required to maintain and to include in its cost of service a substantial number of spares. The Spare Transformer Agreement provides for the Participating Utilities to maintain a pool of transformers in a voltage class that are available to any Participating Utility in that voltage class. Since each Participating Utility's share of the pool of spare transformers is smaller than the number of transformers that it would maintain to be prepared for an event of comparable magnitude, the costs to each Participating Utility are prudently incurred. Similarly, the PIM program enables utilities access to share spare transformers so that all of the joint owners achieve the increased reliability provided by spare transformers without having each utility bear the entire cost of the transformers itself.

Finally, the Commission should hold that the costs incurred in connection with the Spare Transformer Agreement are prudently incurred even if a transfer of transformers occurs between utility affiliates. The concerns that the Commission has expressed with respect to affiliate transactions – that the transaction might benefit one affiliate at the expense of the other – are not present in this instance because the Spare Transformer Agreement does not provide any opportunity for affiliate abuse. The Spare Transformer Agreement imposes obligations on the Participating Utilities to sell spare transformers to each other if a Triggering Event occurs. Therefore, a utility does not have the option to refuse to sell to a purchaser on the ground that it is an affiliate. In addition, because the seller of the spare transformer is limited to receiving the net book value of the transformer or the cost of replacing the transformer, the seller will not profit from the sale. Finally, because the purchasing utility would have to purchase a new transformer at the market price if the Spare Transformer Agreement were not in effect, the purchaser will not benefit unduly from purchasing a transformer from an affiliate instead of from an unaffiliated utility.

**B. THE RECOVERY OF SPARE TRANSFORMER AGREEMENT COSTS
PURSUANT TO SINGLE-ISSUE RATEMAKING IS CONSISTENT WITH
COMMISSION POLICY.**

The recovery of the costs of implementing the Spare Transformer Agreement through single-issue ratemaking is consistent with Commission policy. As explained above, the Spare Transformer Agreement enhances system reliability. The Commission's policy is that costs incurred to enhance system reliability are recoverable pursuant to single-issue rate filings as set forth in several orders and statements described below. Therefore, the Commission should state that FERC-jurisdictional

public utilities may recover the costs associated with the Spare Transformer Agreement in single-issue rate proceedings if they choose to do so.²²

In *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶ 61,299 (2001), the Commission stated that it would approve applications to recover prudently incurred costs necessary to safeguard the reliability and security of the energy supply infrastructure and that Companies may propose separate rate recovery mechanisms such as surcharges to existing rates. In *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052, P 28 (2004), the Commission reaffirmed its 2001 policy statement and clarified that the policy concerning single-issue rate proceedings extends to the recovery of prudent reliability expenditures.

In *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272, p. 61,969, *further order*, 95 FERC ¶ 61,225, p. 61,766 (2001), the Commission stated that it would permit utilities to recover the costs of transmission upgrades pursuant to "limited Section 205 filings that would not open up existing rates for review." Consistent with those orders, the Commission

²² While the Applicants are seeking a Commission order stating that they may recover the costs of complying with the Spare Transformer Agreement pursuant to single-issue rate filings, they are not seeking an order requiring them to do so. Some utilities will recover the costs of compliance with the Spare Transformer Agreement in formula rates or in comprehensive cost of service filings. Other utilities may choose to not make rate filings to recover their costs. The choice of what cost recovery methodology is desired or appropriate is left to each individual utility.

permitted San Diego Gas & Electric Company to recover security-related costs pursuant to a single-issue rate surcharge.²³

Finally, the Commission stated in *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 113 FERC ¶ 61,182, IV FERC Stats. and Regs. ¶ 32,593, P 54 (2005), that the Commission is willing to consider filings that propose rates that are applicable only to new transmission projects.

C. THE RECOVERY OF ACQUISITION PREMIUMS FOR TRANSFORMERS PURCHASED IN RESPONSE TO A TRIGGERING EVENT IS JUST AND REASONABLE.

The Commission should hold that the recovery in rates of an acquisition premium in connection with the purchase of transformers following a Triggering Event is just and reasonable. The Commission's policy is to permit a purchaser of utility assets to recover in rates purchase costs in excess of the net book value of the facilities where the purchase price provides benefits to customers.²⁴

The Commission should hold that the purchaser of a spare transformer pursuant to the terms of the Spare Transformer Agreement should be permitted to recover the purchase cost because the purchase benefits the purchaser's ratepayers. The Spare Transformer Agreement provides for the purchaser to pay the net book value of the transformer or the seller's replacement cost, at the seller's option. If the cost of a new

²³ See *San Diego Gas & Electric Company*, 99 FERC ¶ 61,387 (2002), and *San Diego Gas & Electric Company*, 97 FERC ¶ 61,228 at 62,039-40 (2001) (accepting supplemental surcharge rates for reliability upgrades and citing *Extraordinary Expenditures*, *supra*, n. 18).

²⁴ See, e.g., *UtiliCorp United Inc. and Centel Corp.*, 56 FERC ¶ 61,031 at 61,120 & nn. 26-28, *reh'g denied*, 56 FERC ¶ 61,427 at 62,528-29 (1991); *Minnesota Power & Light Co.*, 43 FERC ¶ 61,104 at 61,341-42, *reh'g denied*, 43 FERC ¶ 61,502 (1989).

transformer exceeds the net book value of the spare transformer and the Spare Transformer Agreement were not in place, the purchaser would have to pay the market price to acquire a new transformer. In addition the purchaser would have to accept the long lead time associated with ordering a new transformer, and would experience degraded system reliability in the interim. The Spare Transformer Agreement enables the purchaser to avoid the delay in replacing its damaged transformers while paying no more than the same price – the cost of a new transformer -- that it would have to pay if the Agreement were not in place. If the Spare Transformer Agreement set the purchase price at the transformer's net book value even though the replacement cost is higher, the purchaser would receive a windfall. Permitting recovery of the acquisition premium appropriately allocates the costs to the utility that receives the benefits of the Spare Transformer Agreement.

In addition, a payment for a spare transformer in excess of its net book value is reasonable because the selling utility does not receive any undue benefit from that sales price. The Spare Transformer Agreement provides that when a Participating Utility sells a transformer, it must maintain its share of the inventory of spare transformers. Therefore, it typically must purchase a new transformer to replace the one it sold. If the supplying utility were required to charge only the net book value of the spare transformer, its customers would be burdened with the cost of replacing the transformer if the replacement cost is greater than the net book value of the transformer that is being sold. The selling utility's customers should not be required to incur any additional costs in conjunction with the purchase of a new transformer to replace the

one being sold because they do not receive any benefit from the sale. Such a result would be a major disincentive to participation in the Spare Transformer Agreement.

D. FERC-JURISDICTIONAL PUBLIC UTILITIES THAT ARE SUBJECT TO RETAIL RATE FREEZES SHOULD BE PERMITTED TO DEFER RECOVERY OF THE COSTS OF COMPLYING WITH THE SPARE TRANSFORMER AGREEMENT.

The Commission should hold that the costs of complying with the Spare Transformer Agreement, including the initial purchase of transformers to maintain the spares called for in the Agreement, the administrative costs of complying with the Agreement and the costs incurred to purchase transformers in the event of a Triggering Event, are eligible for deferred recovery if the utility incurring the expense is subject to a freeze on retail rates.

Deferring recovery of costs until the end of retail rate freezes is consistent with the Commission's recently proposed policy. In *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, 113 FERC ¶ 61,182, IV FERC Stats. and Regs. ¶ 32,593, P 35 (2005), the Commission proposed to permit utilities who make investments in transmission facilities that increase available capacity on the bulk transmission grid, pursuant to the statutory mandate of "benefiting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion,"²⁵ and who also are subject to retail rate freezes, to defer the recovery of those costs until the end of the retail rate freezes. Consistent with that Notice of Proposed Rulemaking, the Commission should hold that the costs of complying with the

²⁵ *Promoting Transmission Investment*, *supra*, at P 1.

Spare Transformer Agreement are eligible for deferred recovery because the utility's expenditures are incurred in order to maintain or to restore reliability on the transmission system.

E. THE COMMISSION'S REVIEW OF THE INCLUSION IN RATES OF COSTS INCURRED PURSUANT TO THE SPARE TRANSFORMER AGREEMENT SHOULD BE LIMITED TO A REVIEW OF WHETHER THE FERC-JURISDICTIONAL PUBLIC UTILITY INCURRED THE COSTS AND WHETHER THE RATES ARE PROPERLY DESIGNED TO RECOVER THOSE COSTS.

The Commission should state in its Declaratory Order that only two issues concerning the recovery of the costs incurred pursuant to the Spare Transformer Agreement will be addressed in any subsequent Section 205 proceedings: whether the FERC-jurisdictional public utility actually incurred the costs under the Agreement and whether the proposed rate provides for the recovery of those costs. The Applicants have requested the Commission to determine in its Declaratory Order that the costs incurred pursuant to the Spare Transformer Agreement are prudently incurred (Section III.A); that the recovery of the purchase cost of a transformer pursuant to the terms of the Spare Transformer Agreement is reasonable (Section III.C); and that recovery of the costs pursuant to single-issue ratemaking is reasonable (Section III.B). If the Commission grants these portions of the Petition, it should not permit intervenors to raise these issues again in subsequent Section 205 proceedings in which the Participating Utilities seek to recover in their rates the costs they incur pursuant to the Spare Transformer Agreement. Therefore, the Applicants request the Commission to confirm in its Declaratory Order that the scope of the Commission's review of a request to recover costs incurred pursuant to the Spare Transformer Agreement will be limited

to the issues of whether the utility incurred the costs claimed and whether the rate design properly provides for the recovery of those costs.

F. TRANSFERS OF SPARE TRANSFORMERS THAT ARE NOT ENERGIZED DO NOT REQUIRE AUTHORIZATION UNDER FPA SECTION 203.

The Commission should clarify that transfers of spare transformers that are not energized, and that therefore are not connected to the interstate transmission grid, do not require Section 203 authorization.²⁶ Section 203 applies to facilities that are “subject to the jurisdiction of the Commission.” Since the Commission’s jurisdiction is defined by the flow of energy through electric transmission facilities,²⁷ it follows that the Commission’s jurisdiction does not extend to facilities through which no electric energy flows. However, the Commission routinely approves transfers of transformers as part of larger transactions,²⁸ and it has explicitly approved the transfer of spare transformers.²⁹ In addition, spare transformers can be considered as jurisdictional for ratemaking purposes because they are eligible for inclusion in utility rates when they are

²⁶ Some spare transformers may be energized and subject to the Commission’s Section 203 jurisdiction because on-line but lightly-loaded transformers can qualify as spares under the Spare Transformer Agreement.

²⁷ *FPC v. Florida Power & Light Co.*, 404 U.S. 453, 469 (1972).

²⁸ See, e.g., *Central Hudson Gas & Electric Corporation*, 115 FERC ¶ 62,255 (2006) (approving transfer of step-up transformers in association with sale of hydroelectric facility).

²⁹ See *Xcel Energy Services, Inc., Northern States Power Company*, 110 FERC ¶ 62,132, at p. 64,271 (2005) (approving sale of “spare, useable 187 MVA, 230/115 kV transformer in storage” to affiliated utility); *New England Power Company*, 93 FERC ¶ 61,023, at p. 61,043 (2000) (authorizing lease of spare transformer).

purchased.³⁰ On the other hand, the orders authorizing the transfers of spare transformers did not address the question whether the spare transformers had been energized and thus had been part of the utility's transmission system, and the issuance of an order approving the inclusion of spare transformer costs in rates does not constitute a determination that a transfer of the transformer is jurisdictional under Section 203. To resolve the issue and clearly set out the Participating Utilities' obligations, the Applicants request the Commission to make a determination that the transfer of a spare transformer that has not been energized is not a sale of jurisdictional facilities that requires authorization under Section 203.

G. ACQUISITIONS BY PUBLIC UTILITIES OF NON-JURISDICTIONAL UTILITIES' SPARE TRANSFORMERS DO NOT REQUIRE AUTHORIZATION UNDER FPA SECTION 203.

The Commission also should clarify that public utility acquisitions of spare transformers from non-jurisdictional utilities do not require authorization under Section 203 of the FPA. Section 203(a)1) provides:

No public utility shall, without first having secured an order of the Commission authorizing it to do so –

(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000;

(B) merge or consolidate, directly or indirectly, such facilities or any part thereof with those of any other person, by any means whatsoever....

³⁰ *New England Power Pool and New England Independent System Operator*, 105 FERC ¶ 61,317, PP 18, 22 (2003).

Section 203(a)(1)(A) does not apply to acquisitions by public utilities of spare transformers from non-jurisdictional utilities because it applies only to dispositions by public utilities. Section 203(a)(1)(B) does not apply to acquisitions of spare transformers by public utilities because those acquisitions do not constitute mergers or consolidations of FERC-jurisdictional facilities with the facilities of other entities. The Commission has previously held that a public utility's acquisition of facilities to be used to provide jurisdictional services from a non-jurisdictional utility requires Section 203 authorization.³¹ However, in that proceeding, the public utility was acquiring transmission facilities that were already in place and integrating the operation of those facilities with the operation of its own facilities, thus fulfilling the "merge or consolidate" requirement of Section 203(a)(1)(B). The acquisitions anticipated by the Spare Transformer Agreement, in contrast, would not consolidate or integrate the operation of transmission facilities since the transformers will be moved from the non-public utility's system and installed in new locations on the systems of public utilities. Therefore, the Applicants request that the Commission clarify that a public utility's acquisition of a spare transformer from a non-jurisdictional utility pursuant to the Spare Transformer Agreement is not a transaction that requires prior approval under Section 203 of the Federal Power Act.

³¹ See *Kandiyohi Power Cooperative*, 107 FERC P 61,285 (2004).

H. THE COMMISSION'S ORDER IN THIS PROCEEDING SHOULD APPLY TO PUBLIC UTILITIES THAT NOTIFY THE COMMISSION THAT THEY HAVE EXECUTED THE SPARE TRANSFORMER AGREEMENT AFTER THE COMMISSION ISSUES ITS ORDER.

Finally, the Commission should state that its order approving transfers under Section 203 and responding to the Petition for a Declaratory Order is applicable to public utilities that execute the Spare Transformer Agreement after the date of the Commission's order in the same way as it is applicable to the Applicants listed in Attachment A, subject to the requirement that later public utility signatories notify the Commission that they have executed the Agreement and that they will comply with the commitments in this pleading concerning informational filings in the event that a FERC-jurisdictional transfer of transformers takes place pursuant to the Agreement. Extension of the Commission's order to the subsequent FERC-jurisdictional signatories is reasonable and consistent with the public interest because it will encourage additional utilities to execute the Spare Transformer Agreement and because it will avoid the time and expense of having to prepare and file additional pleadings with the Commission seeking the same orders as are being sought in this pleading.

IV. CONCLUSION

For the foregoing reasons, the Applicants respectfully request that the Commission:

1. Issue an order by September 17, 2006 authorizing future jurisdictional transactions under the Spare Transformer Agreement as consistent with the public interest under Section 203 of the Federal Power Act, subject to the requirement that public utilities that engage in jurisdictional transfers of transformers pursuant to the

Agreement make informational filings with the Commission explaining the terms of the transfers within thirty days of closing on the transfers.

2. Issue a declaratory order holding that:
 - i) The decisions by each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement to enter into the Agreement, to purchase or sell transformers to meet its obligations under the Agreement, and to purchase or sell transformers in response to a Triggering Event, including decisions to make transfers between affiliates, all are prudent.
 - ii) The costs that each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement incurs pursuant to the Agreement may be recovered in single-issue ratemaking proceedings, at the Applicant's option; or by other means, including formula rates and modifications to stated rates. Such costs include the initial costs to purchase transformers to meet obligations under the Agreement or pursuant to the PIM and the costs incurred to purchase transformers in the event of a Triggering Event, and include the costs of transfers between affiliates.
 - iii) FERC-jurisdictional public utility signatories to the Spare Transformer Agreement may recover in their rates the costs they incur pursuant to the Spare Transfer Agreement to purchase transformers in response to a Triggering Event, including costs in excess of the net book value of the purchased transformers.

- iv) Each FERC-jurisdictional public utility signatory to the Spare Transformer Agreement that is operating under a retail rate moratorium may use a deferred cost recovery mechanism that allows it to commence the recovery of costs associated with the Spare Transformer Agreement in FERC-jurisdictional rates at the end of the retail rate moratorium.
- v) The Commission's review of a filing to recover costs associated with the Spare Transformer Agreement will be limited to a review of whether the public utility has incurred the costs claimed and whether the adder is properly designed to recover the revenue requirement.
- vi) Public utilities do not require Section 203 authorization to transfer transformers that have not been energized because such facilities are not subject to the Commission's jurisdiction.
- vii) Public utilities do not need Section 203 authority to acquire transformers from non-jurisdictional utilities pursuant to the Spare Transformer Agreement because such transfers do not merge or consolidate the public utility's facilities with those of the selling utility; and
- viii) FERC-jurisdictional public utilities that execute the Spare Transformer Agreement after the date of this filing must file notices with the Commission informing it that they are signatories and that they will comply with the commitments made by the Applicants in

this proceeding. Upon such filing those utilities will be authorized under Section 203 of the Federal Power Act to engage in FERC-jurisdictional dispositions of transformers pursuant to the Spare Transformer Agreement on the same terms as the Applicants and also will be entitled to the same rate treatment as the Applicants.

Respectfully submitted,

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July 18, 2006

EXHIBIT I TO THE SECTION 203 APPLICATION

THE SPARE TRANSFORMER AGREEMENT

SPARE TRANSFORMER SHARING AGREEMENT

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	1
Section 1.1 Definitions.....	1
ARTICLE II PARTICIPATING UTILITIES.....	8
Section 2.1 Binding Obligation.....	8
Section 2.2 Equipment Classes.....	8
Section 2.3 Required Regulatory Approvals.....	8
ARTICLE III BASIC OBLIGATIONS	9
Section 3.1 Obligation to Commit.....	9
Section 3.2 Obligation to Acquire.....	10
Section 3.3 Obligation to Replace.....	10
Section 3.4 Obligation to Report.....	10
Section 3.5 Obligation to Maintain.....	11
Section 3.6 Obligation to Certify Compliance.....	12
Section 3.7 Determining Number of Qualified Spare Transformers Committed.....	12
ARTICLE IV CALL RIGHTS.....	13
Section 4.1 Exercise of Call Right.....	13
Section 4.2 Execution of Call Right.....	13
Section 4.3 Objection to Call Right.....	14
Section 4.4 Disputes Concerning Call Rights.....	15
Section 4.5 Qualified Spare Transformers with Multiple Owners.....	15
Section 4.6 Certain Disclaimers.....	16
Section 4.7 Determination of Purchase Price.....	16
ARTICLE V EQUIPMENT COMMITTEE.....	17
Section 5.1 Composition of Equipment Committee.....	17
Section 5.2 Subsequent Representatives; Proxies.....	17
Section 5.3 Equipment Sub-Committees.....	18
Section 5.4 Responsibilities.....	18
Section 5.5 Meetings.....	18
Section 5.6 Notice of Meetings.....	19
Section 5.7 Telephonic Meetings.....	19
Section 5.8 Quorum; Required Vote.....	19
Section 5.9 Notices to Equipment Committee or Equipment Sub-Committee.....	20
Section 5.10 Disputes.....	20
ARTICLE VI EXECUTIVE COMMITTEE	20
Section 6.1 Composition of Executive Committee.....	20
Section 6.2 Selection of Executive Committee.....	21
Section 6.3 Vacancies.....	21
Section 6.4 Responsibilities.....	21
Section 6.5 Meetings.....	21
Section 6.6 Notice of Meetings.....	22
Section 6.7 Telephonic Meetings.....	22
Section 6.8 Quorum; Required Vote.....	22
Section 6.9 Notices to Executive Committee.....	22

Section 6.10	Project Manager.....	22
ARTICLE VII	FINANCIAL MATTERS.....	23
Section 7.1	Cost Sharing.....	23
Section 7.2	Budget; Dues.....	23
ARTICLE VIII	REPRESENTATIONS AND WARRANTIES.....	23
Section 8.1	Organization.....	23
Section 8.2	Authorization.....	24
Section 8.3	Binding Obligation.....	24
Section 8.4	No Approvals Necessary.....	24
Section 8.5	Title to Qualified Spare Transformer.....	24
Section 8.6	Condition of Qualified Spare Transformer.....	24
ARTICLE IX	REMEDIES; INDEMNIFICATION.....	25
Section 9.1	Specific Performance.....	25
Section 9.2	Other Remedies.....	25
Section 9.3	Cumulative Remedies.....	25
Section 9.4	Limitation on Damages.....	25
Section 9.5	Indemnification.....	26
Section 9.6	Survival of Representations and Warranties.....	27
ARTICLE X	WITHDRAWAL.....	27
Section 10.1	Withdrawal Procedure.....	27
Section 10.2	Effectiveness of Withdrawal.....	27
ARTICLE XI	CONFIDENTIALITY.....	27
Section 11.1	Confidentiality Obligation.....	27
Section 11.2	Permitted Disclosures.....	28
Section 11.3	Exceptions.....	28
ARTICLE XII	GENERAL PROVISIONS.....	28
Section 12.1	Force Majeure.....	28
Section 12.2	Assignment.....	29
Section 12.3	Amendments.....	29
Section 12.4	Notices to Parties.....	29
Section 12.5	No Third Party Beneficiaries.....	29
Section 12.6	Interpretation of Agreement.....	29
Section 12.7	Waiver.....	30
Section 12.8	Severability.....	30
Section 12.9	Governing Law.....	30
Section 12.10	Independent Parties; No Agency.....	30
Section 12.11	Counterparts.....	30
Section 12.12	Entire Agreement.....	30

SPARE TRANSFORMER SHARING AGREEMENT

This Spare Transformer Sharing Agreement, dated as of March 15, 2006 (this "Agreement") is entered into by and among each entity that executes and delivers this Agreement, as contemplated hereby (each, a "Party").

WHEREAS, each Party owns or has rights to own or access, or intends to acquire ownership of or rights to own or access, one or more Qualified Spare Transformers (as defined below); and

WHEREAS, each Party desires to participate in an arrangement to share such Qualified Spare Transformers under certain circumstances; and

WHEREAS, each Party desires to memorialize in a written agreement such circumstances and all related rights, responsibilities and obligations associated therewith in an agreement by and among all such Parties; and

WHEREAS, each Party acknowledges that this Agreement is the written agreement so contemplated to be entered into by and among all such Parties.

NOW, THEREFORE, in consideration of these premises and the representations, warranties, covenants and agreements contained herein, each Party, intending to be legally bound hereby, agrees as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following capitalized terms have the meanings set forth below:

"Affiliate" means with respect to any Person, each other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person. For purposes of this definition, "control" means the ability to elect or appoint, directly or indirectly, a majority of the board of directors or other governing body of the relevant Person.

"Approval Date" means (i) if there are Required Regulatory Approvals set forth on a Party's signature page to this Agreement, the earliest of the date on which a Party has obtained all such Required Regulatory Approvals and the date on which a Party determines that it is no longer required to obtain any such Required Regulatory

Approvals, or (ii) if there are no Required Regulatory Approvals set forth on a Party's signature page to this Agreement, the date on which such Party has executed and delivered this Agreement.

"Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

"Call Notice" has the meaning set forth in Section 4.1.

"Call Right" has the meaning set forth in Section 4.1.

"Commit" or "Committed" or "Committing" means that a Participating Utility unconditionally commits, or has committed, subject to the terms of this Agreement, all or a portion of a specifically designated Qualified Spare Transformer that is owned by such Participating Utility, or that such Participating Utility otherwise has rights to own or access, such that if a Call Right is properly exercised pursuant to the terms of Article IV hereof, the Participating Utility, together with all other Persons that also own or have access to such Qualified Spare Transformer, is obligated to sell, or cause to be sold, such Qualified Spare Transformer pursuant to this Agreement.

"Commitment Formula" means the formula described below for calculating the MVA required to be Committed by Participating Utilities in respect of a particular Equipment Class:

In calculating the MVA required to be Committed by Participating Utilities in respect of a particular Equipment Class, each Participating Utility that is a member of such Equipment Class must provide the relevant Equipment Sub-Committee with the following information: (i) the number of banks of spare transformers and the total MVA represented thereby ("Needed MVA") that such Participating Utility would need, in the event that it suffers an S-5 contingency in respect of such Equipment Class (i.e., it has lost five substations that utilize spare transformers in such Equipment Class), to restore its system to satisfy an N-0 Contingency, (ii) the total amount of such Participating Utility's connected MVA in such Equipment Class ("Connected MVA"), and (iii) the total number of qualified spare transformers, together with their MVA, that such Participating Utility then owns and is willing to share with others under this Agreement ("Available Spares"); provided, however, that such number of Available Spares shall in no way be deemed to limit a Participating Utility's Required Obligation in any way.

Based on the foregoing information, the relevant Equipment Sub-Committee will (i) sum the Needed MVA reported by all Participating Utilities in the subject Equipment Class (such sum, the "Aggregate Needed MVA"), (ii) sum the Connected MVA reported by all Participating Utilities in such Equipment Class (such sum, the "Aggregate Connected MVA"), and (iii) determine the "MVA

Factor," which shall mean the sum of the Needed MVA reported by the Participating Utility reporting the largest Needed MVA in such Equipment Class and the amount of MVA represented by the Available Spares reported by such Participating Utility.

Then, the relevant Equipment Sub-Committee shall determine the Required Obligation for each Participating Utility in respect of such Equipment Class by calculating, with respect to each Participating Utility, the average of (i) the MVA Factor multiplied by the ratio of such Participating Utility's Needed MVA to the Aggregate Needed MVA, and (ii) the MVA Factor multiplied by the ratio of such Participating Utility's Connected MVA to the Aggregate Connected MVA. The resulting average for each Participating Utility shall be the MVA required to be Committed by it for that Equipment Class.

For illustrative purposes only, Exhibit B includes an example of the application of the foregoing Commitment Formula to determine the Required Obligation for hypothetical Participating Utilities in a hypothetical Equipment Class.

"Effective Date" has the meaning set forth in Section 2.1.

"Equipment Class" means one of the classes of spare transformers identified on Exhibit A to this Agreement, provided, however, that the Equipment Committee may revise such Exhibit A, from time to time, to add additional classes of spare transformers thereto, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of the Equipment Committee.

"Equipment Committee" means the Equipment Committee contemplated by Article V.

"Equipment Sub-Committee(s)" means the Equipment Sub-Committee(s) contemplated by Article V.

"Estimated Purchase Price" means the Seller's good faith estimate of the Purchase Price, as contemplated by Section 4.7.

"Executive Committee" means the Executive Committee contemplated by Article VI.

"Force Majeure" means an event or circumstance that prevents a Participating Utility from performing its obligations under this Agreement, that is not within the reasonable control of, or the result of the negligence of, such Participating Utility, and that, by the exercise of due diligence, such Participating Utility is unable to overcome or avoid or cause to be avoided.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been

expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region in which the Participating Utility operates.

"Initial Fee" has the meaning set forth in Section 2.1.

"Initial Measurement Date" means June 30, 2008.

"Liens" means any mortgages, pledges, liens, claims, charges, security interests, conditional and installment sale agreements, activity and use limitations, easements, covenants, encumbrances, obligations, limitations, title defects and any other restrictions of any kind, including restrictions on use, transfer or the exercise of any other attribute of ownership.

"Measurement Date" means the Initial Measurement Date and each anniversary of the Initial Measurement Date.

"MVA" means megavolt amperes.

"N-0 Contingency" means, for purposes of this Agreement, a state of the bulk transmission system such that the loss of any single element (N-1), at peak-load conditions, may be expected to result in instability and/or a system in which thermal rating and voltage limits may be exceeded, provided that any such result may reasonably be contained through emergency actions of the transmission operator.

"Net Book Value" means the net book value of a particular Qualified Spare Transformer determined in the ordinary course and consistent with the past practices of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, so long as such practices conform to U.S. generally accepted accounting principles, otherwise such net book value shall be determined in accordance with U.S. generally accepted accounting principles.

"Objection" has the meaning set forth in Section 4.3.

"Participating Utility" has the meaning set forth in Section 2.1.

"Permitted Disposition" means (i) the sale of a Qualified Spare Transformer pursuant to the terms of this Agreement, (ii) the placement in service or similar disposition of a Qualified Spare Transformer not already in service by a Participating Utility for its own use in accordance with Good Utility Practice, (iii) the replacement of a Qualified Spare Transformer, due to its age, obsolescence, damage or any similar reason, in the ordinary course of business consistent with Good Utility Practice, with another Qualified Spare Transformer, (iv) the disposition of a Qualified Spare Transformer pursuant to any rule, regulation or order issued by any governmental authority requiring such disposition that

is applicable to such Qualified Spare Transformer and/or the Participating Utility that Committed it hereunder, (v) the disposition of a Qualified Spare Transformer to another utility that has suffered a casualty or loss of one of its transformers pursuant to any voluntary sharing arrangement or similar arrangement or program, including any informal arrangements, in which the Participating Utility that Committed such Qualified Spare Transformer is participating, and (vi) the loss of a Qualified Spare Transformer in connection with a Triggering Event or other casualty.

"Permitted Liens" means (i) statutory Liens for current taxes, assessments or governmental charges not yet due or delinquent or the validity or amount of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers', landlords' and other similar Liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Participating Utility or the validity or amount of which is being contested in good faith by appropriate proceedings, (iii) pledges, deposits or other Liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation), (iv) Liens arising or incurred in connection with the purchase of the subject Qualified Spare Transformer as to which there is no default on the part of the Participating Utility, (v) Liens arising or incurred in connection with any first mortgage or similar general financing instrument of the Participating Utility as to which there is no default on the part of the Participating Utility, (vi) rights reserved to or vested in a governmental entity or obligations or Liens set forth in any federal, state, local or municipal franchise, grant or license, governing ordinance or any provision of law under which any portion of the Participating Utility's business is conducted or requested, (vii) rights of condemnation, eminent domain or similar rights, and (viii) Liens created by the obligations imposed on the Participating Utility pursuant to this Agreement.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or governmental entity or any department or agency thereof.

"Project Manager" has the meaning set forth in Section 6.10.

"Purchase Price" means the sum of (x) at the Seller's sole option, either the Replacement Cost for the subject Qualified Spare Transformer or the Net Book Value of the subject Qualified Spare Transformer, plus (y) an amount equal to the sum of (i) any "load-out" costs, including any costs of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, to remove such transformer from its pad, test such transformer and empty it of oil, (ii) any freight and other transportation costs of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, associated with delivering such transformer to the Buyer, and (iii) the tax liability, if any, of the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, attributable to the sale of the subject Qualified Spare Transformer at the Replacement Cost or Net Book Value, as the case may be.

"Qualified Participating Utility" means any Participating Utility that (i) on the most recent Measurement Date, had Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation as contemplated by Section 3.1 hereof in respect of each Equipment Class that such Participating Utility is then a member of, (ii) on the date on which the determination is made as to whether such Participating Utility is a Qualified Participating Utility, (x) has Committed all Qualified Spare Transformers required to be then Committed by it pursuant to Section 3.1 hereof in respect of each Equipment Class that such Participating Utility is then a member of, and (y) if applicable pursuant to Section 3.2 hereof, is, in good faith, using its commercially reasonable efforts to take or cause to be taken all actions necessary to permit such Participating Utility to Commit a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for the next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of as soon as practicable but in no event later than the next succeeding Measurement Date, and (iii) is not then in breach of any of its other obligations under this Agreement.

"Qualified Spare Transformer" means an electrical transformer that satisfies those minimum standards set forth on Exhibit A to this Agreement opposite the Equipment Class of such transformer, with such minimum standards to be reviewed and, as necessary, revised, from time to time, by the relevant Equipment Sub-Committee, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee. The number of Qualified Spare Transformers that any Participating Utility shall be deemed to have Committed hereunder shall be determined in accordance with Section 3.7.

"Related Parties" has the meaning set forth in Section 9.4.

"Replacement Cost" means all reasonable costs or expenses incurred by a Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, to replace a particular Qualified Spare Transformer with another transformer of like specifications, which reasonable costs or expenses shall be deemed to include those costs and/or expenses that are appropriate and not excessive under the circumstances prevailing at the time the cost or expense is paid or incurred and may include, but are not limited to, the purchase price for such transformer, transportation costs associated with the delivery of such transformer, and other direct acquisition costs incurred by the Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer; provided, however, that in the event that a Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, in connection with or following the sale of a Qualified Spare Transformer pursuant to the terms of Article IV, elects to replace such Qualified Spare Transformer with another Qualified Spare Transformer owned by such Seller, or, if applicable, the other owner(s) of such Qualified Spare Transformer, or any of their respective Affiliates, or otherwise elects not to purchase a replacement transformer, the Replacement Cost shall be deemed to be, for all purposes hereunder, the Net Book Value of the Qualified Spare Transformer so sold.

"Replacement Date" means, upon any disposition of a Qualified Spare Transformer Committed hereunder, the date that is eighteen calendar months following the date of such disposition. For purposes of this definition, the phrase "date of such disposition" shall refer to the date on which title to the subject transformer is transferred, the date on which the subject transformer is replaced, the date of loss of the subject transformer, or the date on which any other disposition of the subject transformer occurs, as the case may be.

"Replacement Spare Transformer" has the meaning set forth in Section 3.3.

"Representative" means an individual appointed by a Participating Utility pursuant to Section 5.1 or Section 5.2 hereof to (i) serve as its Representative to the Equipment Committee and (ii) receive, on such Participating Utility's behalf, all information to be delivered to any Participating Utility pursuant to this Agreement, provided that any such Representative shall be required by the Participating Utility that he or she represents to observe the confidentiality provisions set forth in Article XI hereof with respect to such information. Each Representative shall also serve on those Equipment Sub-Committees corresponding to the Equipment Classes that the Participating Utility that he or she represents has joined as a member hereunder.

"Required Obligation" means, for each Participating Utility, and in respect of each Equipment Class that such Participating Utility is then a member of, that number of Qualified Spare Transformers representing the MVA required to be Committed by such Participating Utility as calculated for each Measurement Date by the relevant Equipment Sub-Committee pursuant to the Commitment Formula, with Exhibit B to this Agreement to be revised, from time to time, by the relevant Equipment Sub-Committee to reflect each such Participating Utility's Required Obligation for the Initial Measurement Date and the Required Obligation calculated for each succeeding Measurement Date, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee. Notwithstanding any provision of this Agreement to the contrary, a Participating Utility's Required Obligation in respect of a particular Equipment Class shall be zero until such time as such Equipment Class first has three or more members inclusive of such Participating Utility.

"Required Regulatory Approvals" means, with respect to a particular Party, those governmental or other approvals or waivers, and notices to any governmental authorities or other Persons, including any federal notices and approvals, that are (i) required to authorize, or are required in connection with, the performance of this Agreement by such Party, including its performance of the obligations of a Participating Utility hereunder, and (ii) set forth on such Party's signature page to this Agreement.

"Triggering Event" means an act or coordinated acts of deliberate, documented terrorism, as defined in the Homeland Security Act of 2002, 6 U.S.C. §101(15), as the same may be amended from time to time, resulting in (1) the destruction or long-term disabling of one or more electric transmission substations, and (2) the declaration of a state of emergency

by the President of the United States pursuant to the National Emergencies Act, 50 U.S.C. §1601 et seq., as the same may be amended from time to time.

ARTICLE II

PARTICIPATING UTILITIES

Section 2.1 Binding Obligation. A Party is bound by this Agreement upon its execution and delivery of this Agreement, which shall be evidenced by such Party's execution and delivery of a signature page to this Agreement. An executed signature page to this Agreement shall be deemed to be delivered for all purposes hereunder if it is delivered to the Equipment Committee or, if the Equipment Committee has not yet held its first meeting, to the Project Manager. Contemporaneously with its execution and delivery of its signature page to this Agreement, each Party shall pay the sum of \$10,000 (the "Initial Fee") to an account established by the Executive Committee to be used for the administration of this Agreement, provided, that until the Executive Committee establishes any such account, the Initial Fee shall be paid to the Project Manager, which Person shall hold such funds on behalf of the Executive Committee to be deposited into such account as soon as it is established by the Executive Committee. A Party shall become a "Participating Utility" for all purposes hereunder (a "Participating Utility"), immediately and without any further action, upon the later of (i) its Approval Date, and (ii) the date on which at least one of the Equipment Classes that it joins as a member, as contemplated by Section 2.2, first has three or more members inclusive of such Party (the latest of such dates, such Party's "Effective Date"). For the avoidance of doubt, and notwithstanding any other provision of this Agreement to the contrary, except for those obligations and rights contemplated by Articles II, VII, VIII, X, XI and XII hereof, until a Party becomes a Participating Utility hereunder it shall owe no obligation hereunder and shall not be entitled to exercise any rights (including any Call Right) or remedies hereunder.

Section 2.2 Equipment Classes. Upon its relevant Approval Date, each Party shall provide a written notice to the Equipment Committee and any relevant Equipment Sub-Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, that identifies the Equipment Class, or Equipment Classes, such Party is then joining as a member under this Agreement, following which designation, such Party shall be a member of such Equipment Class until it withdraws from such Equipment Class in strict compliance with Section 10.1 hereof. A Party may join as a member of any other Equipment Class at any time by providing written notice of its decision to become a member of any such other Equipment Class to the Equipment Committee and the relevant Equipment Sub-Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, but in no event may a Party withdraw as a member of any Equipment Class, except in strict compliance with Section 10.1 hereof.

Section 2.3 Required Regulatory Approvals. Upon its execution and delivery of this Agreement, each Party shall set forth on its signature page to this

Agreement all of its Required Regulatory Approvals. Each Party, from and after the date of its execution and delivery of this Agreement, shall promptly prepare and file all necessary applications, notices, petitions, filings and other documents, and to use all commercially reasonable efforts, to obtain all Required Regulatory Approvals; provided, however, that the sole remedy for any failure by a Party to use such efforts shall be as set forth in the last sentence of this Section 2.3. If there are Required Regulatory Approvals set forth on a Party's signature page to this Agreement, then no later than the third Business Day following such Party's relevant Approval Date, such Party shall deliver a written notice to the Equipment Committee, or if the Equipment Committee has not yet held its first meeting to the Project Manager, to the effect that it has obtained all such Required Regulatory Approvals or that it is no longer required to obtain such Required Regulatory Approvals. If the relevant Effective Date for a Party has not occurred on or before the date that is the eighteen month anniversary of the date on which such Party has executed and delivered this Agreement, this Agreement shall be null and void and of no further force or effect with respect to such Party.

ARTICLE III

BASIC OBLIGATIONS

Section 3.1 Obligation to Commit. On each Measurement Date, each Participating Utility shall have Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation in respect of each Equipment Class that such Participating Utility is then a member of and, following such Measurement Date, such Participating Utility shall continue to Commit such number of Qualified Spare Transformers through the next succeeding Measurement Date; provided, however, that prior to the first Measurement Date following the date on which a Party becomes a Participating Utility, such Participating Utility shall be deemed to be in compliance with its obligations set forth in this sentence so long as, in the event that it then owns or otherwise has rights to own or access one or more Qualified Spare Transformers, it Commits at least one of such Qualified Spare Transformers up to its Required Obligation calculated for such Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of. On or following any Permitted Disposition by a Participating Utility, so long as such Participating Utility is in compliance with its obligations set forth in Section 3.3 hereof, such Participating Utility shall be deemed to have Committed the Replacement Spare Transformer (as defined below) as a Qualified Spare Transformer for purposes of satisfying its obligations set forth in this Section 3.1, whether or not such Participating Utility yet owns or otherwise has rights to own or access such Replacement Spare Transformer, with such Replacement Spare Transformer becoming a Qualified Spare Transformer that is Committed hereunder upon such Participating Utility's acquisition of ownership, or rights to own or access, such Replacement Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.1.

Section 3.2 Obligation to Acquire. If, at any time prior to the next succeeding Measurement Date, a Participating Utility has not yet Committed a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for such next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of, such Participating Utility shall, in good faith, use its commercially reasonable efforts to take or cause to be taken all actions necessary for such Participating Utility to Commit a number of Qualified Spare Transformers that is at least equal to its Required Obligation calculated for such next succeeding Measurement Date in respect of each Equipment Class that such Participating Utility is then a member of as soon as practicable but in no event later than such next succeeding Measurement Date, except in the case of any Qualified Spare Transformer that is Committed hereunder and is then disposed of in a Permitted Disposition, in which case, such Participating Utility shall comply with its obligations set forth in Section 3.3 in respect of a Replacement Spare Transformer. For the avoidance of doubt, such commercially reasonable efforts shall include, without limitation, executing such purchase orders and other contracts, making any necessary payments under such purchase orders or other contracts, and taking all other reasonable action that is consistent with procuring a Qualified Spare Transformer or rights to own or access a Qualified Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.2.

Section 3.3 Obligation to Replace. If, at any time, a Participating Utility disposes of a Qualified Spare Transformer that such Participating Utility had Committed pursuant to the terms of this Agreement in a Permitted Disposition, or any such Qualified Spare Transformer is otherwise disposed of, in each case such that the disposition causes the number of Qualified Spare Transformers Committed by such Participating Utility to be less than its current Required Obligation, then such Participating Utility shall, in good faith, use its commercially reasonable efforts to take or cause to be taken all actions necessary for such Participating Utility to Commit, in the same Equipment Class, another Qualified Spare Transformer that such Participating Utility owns or has rights to own or access (a "Replacement Spare Transformer") in place of the one so disposed of as soon as practicable but in no event later than the Replacement Date. For the avoidance of doubt, such commercially reasonable efforts shall include, without limitation, executing such purchase orders and other contracts, making any necessary payments under such purchase orders or other contracts, and taking all other reasonable action that is consistent with procuring a Qualified Spare Transformer or rights to own or access a Qualified Spare Transformer. Upon request by the relevant Equipment Sub-Committee, each Participating Utility shall present such Equipment Sub-Committee with evidence reasonably satisfactory to such Equipment Sub-Committee of such Participating Utility's compliance with its obligations set forth in this Section 3.3.

Section 3.4 Obligation to Report. In respect of each Equipment Class that a Participating Utility is a member of, upon becoming a member of such Equipment Class, and from time to time thereafter as requested by the relevant Equipment Sub-

Committee, such Participating Utility shall provide the relevant Equipment Sub-Committee with complete and accurate information necessary for such Equipment Sub-Committee to calculate Required Obligations. Exhibit C to this Agreement shall list in respect of each Participating Utility, opposite the name of such Participating Utility, all Qualified Spare Transformers, by Equipment Class, then Committed by such Participating Utility, together with such additional information regarding each such Qualified Spare Transformers as may be required, from time to time, by the Equipment Committee, with any revisions to the information required to be set forth on Exhibit C to become automatically effective for all purposes hereunder upon the affirmative action of the Equipment Committee. In Committing any Qualified Spare Transformers pursuant to the terms of this Agreement, each Participating Utility shall contemporaneously provide the Equipment Sub-Committee(s) for the Equipment Class(es) of the Qualified Spare Transformer(s) so Committed with the information contemplated by this Section 3.4, with Exhibit C to this Agreement to be updated as necessary to reflect the same. In addition, in Committing a Qualified Spare Transformer hereunder, a Participating Utility shall provide the relevant Equipment Sub-Committee with the identity of each and every other Person that has rights to own or access such Qualified Spare Transformer, together with a description of the nature of any such rights. Each Participating Utility shall promptly, but in no event later than ten (10) Business Days following any loss, disposition or acquisition of a Qualified Spare Transformer Committed or to be Committed hereunder, deliver a written notice to the relevant Equipment Sub-Committee of any loss or disposition of a Qualified Spare Transformer Committed by such Participating Utility or any acquisition of a Qualified Spare Transformer to be Committed by such Participating Utility, together with any other information required by this Section 3.4. Each Equipment Sub-Committee shall cause Exhibit C to this Agreement to be updated on a regular basis to reflect any loss, disposition or acquisition so noticed, as well as the most current information in respect of Qualified Spare Transformers that are Committed hereunder, as contemplated by this Section 3.4, with any such revisions to become automatically effective for all purposes hereunder upon the affirmative action of such Equipment Sub-Committee and a revised copy of Exhibit C to be provided to each Participating Utility's Representative. For the avoidance of doubt, consistent with the confidentiality provisions set forth in Article XI hereof, Exhibit C shall not be made publicly available, but shall be provided only to each Participating Utility's Representative and such other Persons permitted by Section 11.1 hereof.

Section 3.5 Obligation to Maintain. Each Participating Utility shall, in respect of each Qualified Spare Transformer that it Commits hereunder, (i) store and maintain, or cause to be stored and maintained, such Qualified Spare Transformer in accordance with Good Utility Practice and with such care and in such a manner that is at least as favorable as that practiced by such Participating Utility in respect of its other assets, (ii) maintain, or cause to be maintained, such Qualified Spare Transformer with such care and in such a manner that (x) the Participating Utility is able to count it as a spare transformer on its system, (y) it is a complete transformer comprised of all of its standard parts and components, and (z) it is capable of being operated on the Participating Utility's system, (iii) maintain and store, or cause to be maintained and stored, such Qualified Spare Transformer such that it can be shipped to a Buyer as soon as practicable following its receipt of a Call Notice but in no event later than ten (10)

calendar days' following its receipt of any such Call Notice, (iv) not subject such Qualified Spare Transformer to, or permit such Qualified Spare Transformer to be subject to, any Lien other than Permitted Liens, and (v) not dispose of such Qualified Spare Transformer except in a Permitted Disposition.

Section 3.6 Obligation to Certify Compliance. On or before June 30 of each calendar year, each Participating Utility shall deliver to the Equipment Committee a certificate executed on behalf of such Participating Utility by a duly authorized executive officer thereof certifying that such Participating Utility is in compliance with its obligations set forth in Article III of this Agreement.

Section 3.7 Determining Number of Qualified Spare Transformers Committed. For purposes of determining the number of Qualified Spare Transformers (and the MVA represented thereby) that a Participating Utility shall be deemed to have Committed hereunder, the following rules shall apply: (i) if a Participating Utility owns 100% of a Qualified Spare Transformer and no other Person has rights to own or access such Qualified Spare Transformer, such Participating Utility must Commit its entire interest in such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor of 1.0, (ii) if a Participating Utility owns a percentage less than 100% of a Qualified Spare Transformer (or owns 100% of a Qualified Spare Transformer but has granted any other Person rights to own or access such Qualified Spare Transformer), or otherwise has rights to own or access less than 100% of such Qualified Spare Transformer, each Person that owns, or has rights to own or access, a percentage of such Qualified Spare Transformer must also be a Participating Utility that Commits its interest in or rights to such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and, with respect to each such Participating Utility, such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor the numerator of which is the percentage of such Participating Utility's ownership or rights to own or access such Qualified Spare Transformer (or, if such Participating Utility owns 100% of such Qualified Spare Transformer but has granted any other Person rights to own or access such Qualified Spare Transformer, 100 minus the aggregate percentage of such rights granted to all such Persons) and the denominator of which is 100, (iii) if a Participating Utility owns or has rights to own or access a Qualified Spare Transformer as a tenant in common or pursuant to any contract, instrument, agency relationship or other arrangement with one or more other Persons, each such Person must also be a Participating Utility that Commits (or in the case of ownership or other rights as a tenant in common or similar nature, each such Person must have executed an instrument satisfactory to the relevant Equipment Sub-Committee pursuant to which such Person, without being granted any rights whatsoever under this Agreement, including Call Rights, grants such Participating Utility the legal right to Commit) its interest in or rights to such Qualified Spare Transformer in order for such Qualified Spare Transformer (and the MVA represented thereby) to be counted hereunder and, with respect to each such Participating Utility, such Qualified Spare Transformer (and the MVA represented thereby) shall be multiplied by a factor the numerator of which is 1 and the denominator

of which is that number of Persons (including such Participating Utility) that owns or has rights to own or access such Qualified Spare Transformer as a tenant in common or pursuant to such contract, instrument, agency relationship or other arrangement. A Qualified Spare Transformer that is then in service on a particular Participating Utility's system may be Committed and counted hereunder as a Qualified Spare Transformer, as contemplated by this Section 3.7; however, it is anticipated that any Participating Utility that Commits a Qualified Spare Transformer that is then in service on its system will do so with due regard to all applicable reliability standards of the electric reliability organization and such Participating Utility's respective regional entity.

ARTICLE IV

CALL RIGHTS

Section 4.1 Exercise of Call Right. In the event that a Participating Utility is a Qualified Participating Utility and suffers the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice), (i) such Participating Utility shall first take all actions necessary to use any and all spare transformers that it may own or otherwise have rights to own or access in the Equipment Class with respect to which the destruction or long-term disabling occurred in an effort to remedy such destruction or long-term disabling to the extent necessary to satisfy an N-0 Contingency, and (ii) if, following such actions, such Participating Utility has not been able to remedy such destruction or long-term disabling to the extent necessary to satisfy an N-0 Contingency, such Participating Utility (the "Buyer") shall have the right, subject to the terms of this Article IV, and only to the extent necessary to provide such Participating Utility with a sufficient number of transformers in service on its system to satisfy an N-0 Contingency, to purchase, in its sole discretion, any Qualified Spare Transformer that all or a portion of which is Committed hereunder in an Equipment Class that the Buyer has joined as a member and with respect to which such destruction or long-term disabling occurred in consideration for the applicable Purchase Price (the "Call Right"), by delivering a written notice (the "Call Notice") to any Participating Utility that has Committed such Qualified Spare Transformer hereunder (the "Seller") certifying that it (x) is a Qualified Participating Utility, (y) has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) and (z) has complied with its obligations set forth in clause (i) of this Section 4.1 and nevertheless is unable to satisfy an N-0 Contingency (collectively, the "Prerequisites") and identifying the Qualified Spare Transformer with respect to which the Call Right is being exercised.

Section 4.2 Execution of Call Right. Upon receipt of a Call Notice, the Seller shall, unless it asserts in good faith an Objection (as defined below), sell, or cause to be sold, the Qualified Spare Transformer that is the subject of the Call Notice to the Buyer free and clear of all Liens, other than Permitted Liens, in consideration for the applicable Purchase Price, with such sale to be consummated on the following terms: (i)

no later than three (3) calendar days following its receipt of a Call Notice, the Seller shall deliver a written notice to the Buyer setting forth the Estimated Purchase Price, (ii) the Buyer shall deliver the Estimated Purchase Price to the Seller, or such other Person as the Seller may designate, by wire transfer in immediately available funds to an account or accounts designated by the Seller or, if acceptable to the Seller, in its sole discretion, by delivering a promissory note, in form and substance satisfactory to the Seller, made payable to the Seller, or such other Person as the Seller may designate, in the principal amount of the Estimated Purchase Price or by such other means as are mutually acceptable to the Buyer and the Seller, (iii) the Buyer shall purchase the Qualified Spare Transformer subject to the disclaimers set forth in Section 4.6, and the Buyer and the Seller shall provide those indemnities in respect of the purchase of such Qualified Spare Transformer that are contemplated by Section 9.5, (iv) unless the Buyer and the Seller agree otherwise, the Buyer shall purchase the Qualified Spare Transformer, and title thereto shall transfer, at the location at which the Seller is then maintaining, or causing to be maintained, such Qualified Spare Transformer, with the Buyer responsible for any and all transportation costs, and the Buyer to bear the risk of loss, from such point of sale, (v) the Buyer and the Seller shall execute and deliver, or cause to be executed and delivered, such documents or instruments as either the Buyer or the Seller shall reasonably request in connection with evidencing the sale of the subject Qualified Spare Transformer to the Buyer or the vesting of title thereto in the Buyer, (vi) upon and following the consummation of any such sale, the Seller shall use all commercially reasonable efforts to cancel, satisfy or otherwise remove, or cause to be cancelled, satisfied or otherwise removed, any and all Liens to which the Qualified Spare Transformer may be subject at the time of sale to the Buyer or otherwise as a result of any acts or omissions of the Seller or any other Person having rights to own or access such Qualified Spare Transformer, and (vii) following the consummation of any such sale, the Buyer and the Seller shall determine and make, or cause to be made, any payments in respect of the Purchase Price that are required pursuant to Section 4.7.

Section 4.3 Objection to Call Right. In the event that, upon receipt of a Call Notice, the Seller has a good faith basis to assert that (i) the Prerequisites have not been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice because the Seller has received more than one Call Notice for the same Qualified Spare Transformer or the Seller has received multiple Call Notices in respect of the same Triggering Event while other Participating Utilities in the same Equipment Class have not received any Call Notices in respect of such Triggering Event, the Seller may make any such assertion by delivering to the Buyer and the Executive Committee, no later than one (1) calendar day following the Seller's receipt of a Call Notice, a written notice making such an assertion (an "Objection"), upon receipt of which the Buyer may refer the matter immediately to the Executive Committee, in which case the Executive Committee shall promptly convene to determine whether or not (i) the Prerequisites have been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified

Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice. In the event the Executive Committee determines that (i) the Prerequisites have been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has not suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, and/or (iii) it would not be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice, as applicable, the Seller shall proceed to consummate, or caused to be consummated, the sale of the Qualified Spare Transformer indicated in the Call Notice pursuant to the terms of Section 4.2. In the event the Executive Committee determines that (i) the Prerequisites have not been satisfied, (ii) the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, has suffered the destruction or long-term disabling of one or more electric transmission substations in connection with a Triggering Event (other than in response to a Call Notice) or other casualty that is then still affecting the Seller, or if applicable the other owner(s) of the subject Qualified Spare Transformer, and/or (iii) it would be inequitable to require the sale of the subject Qualified Spare Transformer pursuant to the Call Notice, as applicable, the Seller shall be under no obligation to consummate, or cause to be consummated, the sale of the Qualified Spare Transformer indicated in the Call Notice, but the Buyer shall be free to deliver another Call Notice to any Participating Utility, including the Seller, at such time, and in such event, as the Buyer in good faith believes that the Prerequisites have been satisfied and that the Participating Utility to which such Call Notice is to be delivered has no good faith basis to assert an Objection.

Section 4.4 Disputes Concerning Call Rights. In the event of any dispute between the Buyer and the Seller concerning any Call Notice, the satisfaction of the Prerequisites, any Objection, the refusal, for any reason, by the Buyer or the Seller to consummate, or cause to be consummated, a sale pursuant to the terms of this Agreement, or any other matter relating to the consummation of a sale pursuant to the terms of this Agreement shall first be referred to the Executive Committee, by written notice delivered by the Buyer or the Seller, for resolution prior to either the Buyer or the Seller pursuing any remedies set forth in Article IX. In the event the Executive Committee fails to propose a resolution to the matter within three (3) Business Days of such matter being referred to it, or in the event the Buyer or the Seller disagree with the Executive Committee's proposed resolution of the matter, the Buyer and the Seller shall be free to exercise any and all available remedies as contemplated by Article IX.

Section 4.5 Qualified Spare Transformers with Multiple Owners. Each Participating Utility that owns, or has rights to own or access, together with one or more other Participating Utilities, any portion of a particular Qualified Spare Transformer that is Committed hereunder hereby appoints each other Participating Utility that owns, or has rights to own or access, any portion of such Qualified Spare Transformer as its true

and lawful agent and attorney-in-fact for purposes of consummating, or causing to be consummated, the sale of such Qualified Spare Transformer in strict compliance with this Article IV such that if any Participating Utility that owns or has rights to own or access any portion of such Qualified Spare Transformer receives a Call Notice in respect of such Qualified Spare Transformer it shall have sufficient authority, rights and powers to consummate, or cause to be consummated, the sale of such Qualified Spare Transformer as a Seller hereunder, without any further action required by any other Participating Utility that owns or has rights to own or access such Qualified Spare Transformer, with each such Participating Utility declaring that the foregoing powers are coupled with an interest and are irrevocable.

Section 4.6 Certain Disclaimers. For the avoidance of doubt, each Participating Utility acknowledges and agrees that any Qualified Spare Transformer purchased pursuant to the terms of this Agreement is, and shall be, sold subject to the following disclaimers:

EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES OF THE SELLER SET FORTH IN ARTICLE VIII and EXCEPT FOR THOSE COVENANTS OF THE SELLER SET FORTH IN SECTION 4.2 AND SECTION 9.5 OF THIS AGREEMENT, SUCH QUALIFIED SPARE TRANSFORMER IS SOLD "AS IS, WHERE IS" AND THE SELLER DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE OR QUALITY OF SUCH QUALIFIED SPARE TRANSFORMER, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

Section 4.7 Determination of Purchase Price. No later than six (6) calendar months following any sale consummated pursuant to the terms of this Agreement, the Seller shall deliver to the Buyer a written notice prepared in good faith and setting forth the Seller's calculation of the Purchase Price, together with written documentation of the Seller's actual costs and expenses incurred in respect of any costs or expenses included in the Purchase Price and of the Seller's tax liability, if any, attributable to the sale of the subject Qualified Spare Transformer at the Replacement Cost or the Net Book Value, as the case may be. If the Buyer in good faith objects to the Seller's calculation of the Purchase Price, it may object to such calculation by delivering a written notice to the relevant Equipment Sub-Committee and the Seller requesting that such Equipment Sub-Committee review the Seller's calculation of the Purchase Price. For the avoidance of doubt, any dispute concerning the Purchase Price shall first be so referred to the relevant Equipment Sub-Committee prior to either the Buyer or the Seller pursuing any remedies set forth in Article IX. Upon receipt of any such notice, the relevant Equipment Sub-Committee shall promptly convene to determine the Purchase Price of the subject Qualified Spare Transformer. In connection with the foregoing, each of the Buyer and the Seller shall fully cooperate with any such review by such Equipment

Sub-Committee, including by providing such books and records, and such other information available to it, as is necessary for such Equipment Sub-Committee to conduct such review. In the event that such Equipment Sub-Committee fails to determine the Purchase Price within twenty (20) Business Days of such matter being referred to it, or in the event the Buyer or the Seller disagree with such Equipment Sub-Committee's determination of the Purchase Price, the Buyer and the Seller shall be free to exercise any and all available remedies as contemplated by Article IX. In the event that the Buyer and the Seller agree on the amount of the Purchase Price, the Buyer and the Seller agree with the relevant Equipment Sub-Committee's determination of the Purchase Price or the Purchase Price is finally determined by a court of competent jurisdiction, (i) if the Purchase Price exceeds the Estimated Purchase Price actually paid, the Buyer shall within ten (10) Business Days of such agreement or determination pay to the Seller the amount by which the Purchase Price exceeds the Estimated Purchase Price, and (ii) if the Estimated Purchase Price actually paid exceeds the Purchase Price, the Seller shall within ten (10) Business Days of such agreement or determination refund to the Buyer the amount by which the Estimated Purchase Price exceeds the Purchase Price.

ARTICLE V

EQUIPMENT COMMITTEE

Section 5.1 Composition of Equipment Committee. Each Participating Utility shall be entitled to appoint one individual who qualifies as a Representative hereunder to serve as its Representative on the Equipment Committee and on those Equipment Sub-Committees corresponding to the Equipment Classes that such Participating Utility has joined as a member hereunder. In order for an individual to qualify as a Representative hereunder, he or she must (i) have engineering and utility operation experience, (ii) be authorized by the Participating Utility that it represents to bind such Participating Utility in any matters to be acted upon by the Equipment Committee or any Equipment Sub-Committee hereunder, and (iii) be required by such Participating Utility to observe the confidentiality provisions set forth in Article XI hereof. No later than three (3) Business Days following its relevant Effective Date, each Participating Utility shall name its initial Representative, and provide the contact information required by this Agreement for such Representative, by delivering to the Equipment Committee, or if the Equipment Committee has not yet held its first meeting, the Project Manager, a notice setting forth such name and such contact information. The chairperson of the Equipment Committee shall, from time to time, provide all Representatives to the Equipment Committee with an updated list of the names and contact information for all other Representatives to the Equipment Committee.

Section 5.2 Subsequent Representatives; Proxies. Each Participating Utility shall be entitled to remove and replace its Representative at any time, in its discretion, and to fill any vacancy in its Representative, in any case so long as (i) the Representative appointed as a replacement or to fill any vacancy is qualified as a Representative under Section 5.1 hereof and (ii) such Participating Utility provides notice to the Equipment Committee that the Representative so appointed is the current

Representative of such Participating Utility. A Representative may execute one or more proxies for purposes of being represented and voting at any meeting of the Equipment Committee or any Equipment Sub-Committee so long as any such proxy is in writing, is signed by the Representative granting the proxy, and the proxy is granted in favor of an employee of the Participating Utility represented by the Representative who would otherwise meet the qualifications of a Representative under Section 5.1 hereunder. Notwithstanding the foregoing, any Representative removed by a Participating Utility, and any Person who is granted a proxy, through such proxy's duration and following its expiration or termination, shall continue to be required by the Participating Utility that he or she represents or represented to observe the confidentiality provisions set forth in Article XI hereof, with such Participating Utility responsible for any failure by any such Person to comply with such provisions.

Section 5.3 Equipment Sub-Committees. The Equipment Committee shall be divided into a number of Equipment Sub-Committees corresponding to the Equipment Classes of Qualified Spare Transformers that have been Committed hereunder, with each Representative serving on those Equipment Sub-Committees that correspond to the Equipment Class or Equipment Classes of any Qualified Spare Transformers that the Participating Utility that he or she represents has Committed hereunder.

Section 5.4 Responsibilities. The Equipment Committee shall meet, from time to time, to consider and act upon the following matters: (i) elect its chairperson, (ii) elect Participating Utilities for the purpose of appointing members of the Executive Committee, as contemplated by Section 6.2 hereof, (iii) take such other action contemplated by this Agreement to be taken by the Equipment Committee. Each Equipment Sub-Committee shall meet, from time to time, to consider and act upon the following matters: (i) elect its chairperson, (ii) calculate Required Obligations as contemplated by this Agreement, and (iii) take such other action contemplated by this Agreement to be taken by such Equipment Sub-Committee. Each Equipment Sub-Committee shall, as soon as practicable following such time as its Equipment Class first has three or more members, calculate the Required Obligation for each of its members in respect of the Initial Measurement Date, and, as soon as practicable following the Initial Measurement Date and each Measurement Date thereafter, calculate the Required Obligation for each of its members in respect of the next succeeding Measurement Date. In addition, in the event that, following the calculation of any such Required Obligation, one or more additional Participating Utilities joins a particular Equipment Class, the relevant Equipment Sub-Committee may, upon the affirmative action of the members of such Equipment Class, recalculate the Required Obligation for each of its members for the next succeeding Measurement Date.

Section 5.5 Meetings. At its first meeting of each calendar year, the Equipment Committee and each Equipment Sub-Committee, respectively, shall meet to elect its respective chairperson and transact such other business as shall properly come before it under this Agreement. The chairpersons of the Equipment Committee and each Equipment Sub-Committee, as the case may be, shall call a meeting of the Equipment Committee and such Equipment Sub-Committee, respectively (i) within 45 days

following the beginning of each calendar year, provided, however, that during calendar year 2006, the initial meeting of the Equipment Committee shall be called as soon as practicable following the date hereof, (ii) as necessary to perform the function of the Equipment Committee and such Equipment Sub-Committee, as the case may be, under this Agreement, (iii) at the request of twenty percent of the members of the Equipment Committee or the Equipment Sub-Committee, as the case may be, and (iv) as the chairperson, in his or her discretion, otherwise deems necessary.

Section 5.6 Notice of Meetings. The chairpersons of the Equipment Committee and each Equipment Sub-Committee shall deliver, or cause to be delivered, to each Representative serving on the Equipment Committee and such Equipment Sub-Committee, respectively, a notice, delivered to such Representative's email address, containing the date, place, time of, and dial-in instructions for telephone conference participation in, any meeting of the Equipment Committee or such Equipment Sub-Committee, as the case may be, on or before two (2) Business Days prior to such meeting, or on such shorter notice as the chairperson deems necessary under the circumstances. Each Representative is responsible for providing the Equipment Committee with a current email address to use for notice purposes hereunder.

Section 5.7 Telephonic Meetings. The Equipment Committee and each Equipment Sub-Committee may meet in person or by telephone conference call, so long as each member of the Equipment Committee or Equipment Sub-Committee, as the case may be, is able to hear and speak to all other members in attendance at such meeting. Any meeting that is held in person shall also provide adequate means for Representatives to participate by telephone conference as well, as contemplated by the immediately preceding sentence.

Section 5.8 Quorum; Required Vote. A majority of the members of the Equipment Committee or any Equipment Sub-Committee shall constitute a quorum for the conduct of business at any meeting of the Equipment Committee or an Equipment Sub-Committee, respectively. A decision by a simple majority of the votes cast by members of the Equipment Committee or any Equipment Sub-Committee present and voting at any such meeting of the Equipment Committee or such Equipment Sub-Committee at which a quorum is present, respectively, shall constitute the action of the Equipment Committee or such Equipment Sub-Committee, as the case may be. A Representative may be represented and vote at any meeting by means of a proxy, as provided in Section 5.2. In acting upon any matter brought before the Equipment Committee, including the election of any Participating Utility by the Equipment Committee for purposes of appointing a member of the Executive Committee pursuant to Section 6.2 hereof, each Representative shall be entitled to cast a number of votes equal to the amount of MVA represented by the number of Qualified Spare Transformers then deemed to be Committed hereunder by the Participating Utility that such Representative represents, as determined in accordance with Section 3.7. In acting upon any matter brought before any Equipment Sub-Committee, each Representative shall be entitled to cast a number of votes equal to the amount of MVA represented by the number of Qualified Spare Transformers then deemed to be Committed hereunder in the relevant

Equipment Class by the Participating Utility that such Representative represents, as determined in accordance with Section 3.7.

Section 5.9 Notices to Equipment Committee or Equipment Sub-Committee. All notices required to be given hereunder to the Equipment Committee or any Equipment Sub-Committee shall be given to the Project Manager until the Equipment Committee or Equipment Sub-Committee, as the case may be, holds its first meeting and elects its first chairperson, and thereafter shall be given to the current chairperson of the Equipment Committee or Equipment Sub-Committee, as the case may be, at such email address as such chairperson may provide upon his or her election and from time to time thereafter.

Section 5.10 Disputes. Any dispute involving any decision of the Equipment Committee or any Equipment Sub-Committee shall first be referred to the Executive Committee, by written notice delivered to the Executive Committee by any affected Participating Utility, for resolution prior to any such Participating Utility pursuing any remedies set forth in Article IX. In the event the Executive Committee fails to propose a resolution to the matter within ten (10) Business Days of such matter being referred to it, or in the event any affected Participating Utility disagrees with the Executive Committee's proposed resolution of the matter, any such affected Participating Utility shall be free to exercise any and all available remedies as contemplated by Article IX.

ARTICLE VI

EXECUTIVE COMMITTEE

Section 6.1 Composition of Executive Committee. The Executive Committee shall be comprised of eleven (11) members appointed by those eleven (11) Participating Utilities elected by the Equipment Committee for the purpose of appointing a member of the Executive Committee pursuant to Section 6.2 hereof; provided, however, that (i) one of such Participating Utilities so elected shall be a Participating Utility whose annual peak load is such that seventy-five percent of all other Participating Utilities have annual peak loads greater than the annual peak load of such Participating Utility, (ii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the FRCC region as of the date hereof, (iii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the SERC region as of the date hereof, (iv) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the WECC region as of the date hereof, (v) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the ERCOT region as of the date hereof, (vi) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the SPP region as of the date hereof, (vii) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the NPCC region as of the date hereof, (viii) one of such

Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the MRO region as of the date hereof, and (ix) one of such Participating Utilities so elected shall be a Participating Utility that operates in the geographic area covered by the Reliability First region as of the date hereof.

Section 6.2 Selection of Executive Committee. At the first meeting of the Equipment Committee of each calendar year (or, during calendar year 2006, at such time as the Equipment Committee deems appropriate), the Equipment Committee shall elect eleven (11) Participating Utilities, in strict compliance with the provisions of Section 6.1 hereof, with each Participating Utility so elected entitled to each appoint one member of the Executive Committee to serve a term commencing on the date of such meeting until his or her successor is appointed and duly qualified at the first meeting of the Equipment Committee of the next succeeding calendar year. Each Participating Utility so elected to appoint a member of the Executive Committee shall appoint its chief executive officer or such other senior officer of such Participating Utility as its chief executive officer may designate. No Participating Utility may be elected to appoint more than one member of the Executive Committee during any calendar year, no Participating Utility may be elected to appoint a member of the Executive Committee for more than two (2) consecutive years, and at no time shall two or more Participating Utility's that are Affiliates be elected to appoint a member of the Executive Committee during the same calendar year unless, in each case, there are no other Participating Utilities that would otherwise qualify for election pursuant to this Section 6.2.

Section 6.3 Vacancies. Each Participating Utility that is entitled to appoint a member of the Executive Committee shall be entitled to remove and replace the member it so appointed at any time. In the event of a vacancy, for any reason, in any member of the Executive Committee, the Participating Utility that originally appointed such member shall be entitled to fill such vacancy by naming a new member of the Executive Committee so long as (i) the member appointed to fill any such vacancy is the chief executive officer of such Participating Utility or such other senior officer of such Participating Utility as its chief executive officer may designate and (ii) such Participating Utility provides notice to the Executive Committee that it has filled such vacancy.

Section 6.4 Responsibilities. The Executive Committee shall meet, from time to time, to consider and act upon the following matters: (i) to elect its chairperson, (ii) to develop a budget, and determine the dues to be paid by Participating Utilities, for the next succeeding calendar year, as contemplated by Section 7.2 hereof, and (iii) to take such other action contemplated by this Agreement to be taken by the Executive Committee.

Section 6.5 Meetings. The first meeting of the Executive Committee of each calendar year shall be held as soon as practicable following the first meeting of the Equipment Committee of such calendar year, upon at least two (2) Business Days' prior notice to the members of the Executive Committee delivered by the chairperson of the Equipment Committee, for the purpose of electing the chairperson of the Executive Committee and transacting such other business as shall properly come before it under this

Agreement. Thereafter, the chairperson of the Executive Committee shall call a meeting of the Executive Committee (i) as necessary to perform the function of the Executive Committee under this Agreement, (ii) at the request of twenty percent of the members of the Executive Committee, and (iii) as the chairperson, in his or her discretion, otherwise deems necessary.

Section 6.6 Notice of Meetings. Except with respect to the first meeting of the Executive Committee of each calendar year, which shall be noticed as contemplated in Section 6.5 hereof, the chairperson of the Executive Committee shall deliver, or cause to be delivered, to each member of the Executive Committee a notice delivered to such member's email address, containing the date, place, time of, and dial-in instructions for telephone conference participation in, any meeting of the Executive Committee on or before one calendar day prior to such meeting, or on such shorter notice as the chairperson deems necessary under the circumstances. Each member is responsible for providing the Executive Committee with a current email address to use for notice purposes hereunder, as well as such member's work, home and cellular telephone contact information.

Section 6.7 Telephonic Meetings. The Executive Committee may meet in person or by telephone conference call, so long as each member of the Executive Committee is able to hear and speak to all other members in attendance at such meeting. Any meeting that is held in person shall also provide adequate means for members to participate by telephone conference as well, as contemplated by the immediately preceding sentence.

Section 6.8 Quorum; Required Vote. A majority of the members of the Executive Committee shall constitute a quorum for the conduct of business at any meeting of the Executive Committee. A decision by a simple majority of the votes cast by members of the Executive Committee present and voting at any such meeting of the Executive Committee at which a quorum is present shall constitute the action of the Executive Committee. No member of the Executive Committee may vote or be represented at any meeting by means of a proxy. In acting upon any matter brought before the Executive Committee, each member shall be entitled to cast one vote.

Section 6.9 Notices to Executive Committee. All notices required to be given hereunder to the Executive Committee shall be given to the chairperson of the Equipment Committee until the Executive Committee holds its first meeting and elects its first chairperson, and thereafter shall be given to the current chairperson of the Executive Committee, at such email address as such chairperson may provide upon his or her election and from time to time thereafter.

Section 6.10 Project Manager. The Executive Committee is authorized to enter into such arrangements as it deems necessary and appropriate to retain one or more qualified Persons to serve as the project manager of this Agreement (the "Project Manager"). Any such Project Manager shall be reasonably compensated, and reimbursed for its expenses, by the Executive Committee, with such compensation and expenses to be taken into account by the Executive Committee in preparing the budget and

determining dues as contemplated by Section 7.2 hereof. Each Participating Utility acknowledges and agrees that Edison Electric Institute shall, until the Initial Measurement Date or such earlier date as the Executive Committee may determine, serve as the Project Manager and, in such capacity, shall (i) oversee the development of a database of Qualified Spare Transformers that are Committed hereunder, (ii) develop and deliver summary reports on the status of such database, industry participation in this Agreement, and such other matters as may be requested by the Executive Committee or the Equipment Committee, (iii) assist the Executive Committee, the Equipment Committee, and the Equipment Sub-Committees with their respective administrative responsibilities as contemplated by this Agreement, including the coordination of their respective meetings, and the preparation of, and revisions to, the Exhibits to this Agreement as contemplated hereby.

ARTICLE VII

FINANCIAL MATTERS

Section 7.1 Cost Sharing. Each Party recognizes and agrees that all Parties are responsible for sharing the costs associated with the administration of this Agreement, as provided in this Article VII.

Section 7.2 Budget; Dues. Beginning with the calendar year 2006, and continuing each calendar year thereafter, the Executive Committee shall adopt a budget, and determine the dues to be paid by Parties, for the next succeeding calendar year. Dues shall be paid by each Party, on or before the date set by the Executive Committee for the payment of dues for such calendar year, to an account established by the Executive Committee to be used for the administration of this Agreement, provided, that until the Executive Committee establishes any such account, all dues shall be paid to the Project Manager, which Person shall hold such funds on behalf of the Executive Committee to be deposited into such account as soon as it is established by the Executive Committee. Notwithstanding any other provision of this Agreement to the contrary, a Party shall be excused from paying dues as contemplated by this Section 7.2 during the calendar year in which such Party executes and delivers its signature page to this Agreement and pays the Initial Fee contemplated by Section 2.1.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to all other Parties that:

Section 8.1 Organization. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, such Party is duly organized, validly existing and in good standing under the laws of the state of its organization or by federal statute

and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

Section 8.2 Authorization. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary action on the part of such Party and do not, and will not, violate, conflict with or give rise to a breach or event of default under any of such Party's constituent documents or any agreement by which such Party or any Qualified Spare Transformer that it Commits hereunder may be bound.

Section 8.3 Binding Obligation. On the date that such Party executes and delivers this Agreement, on the Effective Date, and on the date of any sale consummated pursuant to the terms of this Agreement, this Agreement is a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies hereunder may become subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law).

Section 8.4 No Approvals Necessary. On the date that such Party executes and delivers this Agreement, except for those Required Regulatory Approvals set forth on its signature page to this Agreement, such Party has obtained any and all Required Regulatory Approvals. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, such Party has obtained any and all Required Regulatory Approvals.

Section 8.5 Title to Qualified Spare Transformer. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, with respect to each Qualified Spare Transformer that it Commits, or purports to Commit, hereunder, such Party owns or has rights to own or access, directly or indirectly, such Qualified Spare Transformer free and clear of any Liens, except for Permitted Liens, such that in the event such Qualified Spare Transformer is sold to a Buyer pursuant to the terms of this Agreement, upon the consummation of any such sale, subject only to clause (vi) of Section 4.2 hereof, the Buyer shall have good and valid title to such Qualified Spare Transformer.

Section 8.6 Condition of Qualified Spare Transformer. On the Effective Date and on the date of any sale consummated pursuant to the terms of this Agreement, with respect to each Qualified Spare Transformer that it Commits, or purports to Commit, hereunder, such Party has maintained each such Qualified Spare Transformer in strict compliance with Section 3.5.

ARTICLE IX

REMEDIES; INDEMNIFICATION

Section 9.1 Specific Performance. Each Participating Utility acknowledges and agrees that all other Participating Utilities that have Committed or plan to Commit a Qualified Spare Transformer in the Equipment Class or Equipment Classes to which it has Committed a Qualified Spare Transformer are relying on it to consummate, or cause to be consummated, the sale of such Qualified Spare Transformer upon the proper exercise of a Call Right under this Agreement, that each such Qualified Spare Transformer is unique, that it would be virtually impossible to quickly obtain a fully adequate substitute for any such Qualified Spare Transformer in the event that it fails to consummate, or cause to be consummated, the sale of a Qualified Spare Transformer pursuant to a properly exercised Call Right under this Agreement, and that the award of damages at law may not be an adequate remedy. Accordingly, each Participating Utility agrees that in the event that it fails to consummate, or cause to be consummated, the sale of a Qualified Spare Transformer pursuant to a properly exercised Call Right under this Agreement, and in addition to any other remedy contemplated hereby, a court of competent jurisdiction shall have the power and authority to grant a request made by the Buyer for specific performance, including, without limitation, a request for specific performance to enforce the powers granted in Section 4.5 hereof, where such specific performance is an appropriate remedy under applicable law or applicable equitable principles. Notwithstanding any provision of this Agreement to the contrary, if any Participating Utility resorts to legal proceedings to specifically enforce this Agreement, the Participating Utility that is the prevailing party in such proceedings will be entitled to recover from the Participating Utility that is not the prevailing party in such proceedings all costs incurred by the prevailing party, including reasonable attorney's fees, in addition to any other relief to which it may be entitled under the terms hereof; provided, however, that the foregoing recovery of costs shall at all times be subject to the limitations set forth in Section 9.4.

Section 9.2 Other Remedies. For the avoidance of doubt, the remedy provided for in Section 9.1 is not exclusive and is not intended to preclude any Participating Utility from pursuing any other right or remedy that may be available to such Participating Utility at law or in equity, including any such right to recover direct damages or pursue such other legal or equitable relief as may be available under applicable law or applicable equitable principles.

Section 9.3 Cumulative Remedies. For the avoidance of doubt, all rights and remedies of any Participating Utility under this Agreement are cumulative of every other right or remedy that such Participating Utility may otherwise have at law or in equity and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

Section 9.4 Limitation on Damages. Notwithstanding any other provision of this Agreement to the contrary, (i) no Participating Utility, nor any of its officers, directors, agents, employees, parents, Affiliates, successors, assigns, contractors

or subcontractors (collectively, "Related Parties") shall be liable to any other Participating Utility or its Related Parties for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement in any amount in excess of the actual compensatory damages, court costs and reasonable attorneys' fees suffered by such other Participating Utility or its Related Parties in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, (ii) each Participating Utility waives any right to recover incidental, punitive, exemplary, special, indirect, multiple, or consequential damages (including attorneys' fees or litigation costs to recover the same and lost profits) in connection with, or resulting from, performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, or strict liability, and (iii) in no event shall any Participating Utility, in connection with any single event or series of related events, be liable to any other Participating Utility hereunder in any amount in excess of 150% of the Purchase Price for the relevant Qualified Spare Transformer.

Section 9.5 Indemnification. In respect of any purchase and sale consummated as a result of a Call Right exercised under this Agreement, the Buyer and the Seller shall make the following indemnities:

Subject at all times to the limitations set forth in Section 9.4, the Seller agrees to indemnify, defend and hold the Buyer harmless from and against any loss, damage, expense (including reasonable attorneys' fees) or claim, whether direct or indirect, known or unknown, absolute or contingent, that relates to, results from, or arises in connection with (i) any breach of the Seller's representations and warranties contained in Article VIII, and (ii) any and all Liens to which the subject Qualified Spare Transformer may be subject at the time of sale to the Buyer or otherwise as a result of any acts or omissions of the Seller or any other Person having rights to own or access such Qualified Spare Transformer; and

Subject at all times to the limitations set forth in Section 9.4, the Buyer agrees to indemnify, defend and hold the Seller harmless from and against any loss, damage, expense (including reasonable attorneys' fees) or claim, whether direct or indirect, known or unknown, absolute or contingent, that relates to, results from, or arises in connection with (i) any breach of the Buyer's representations and warranties contained in Article VIII, (ii) any and all liabilities and obligations in respect of the subject Qualified Spare Transformer that are attributable to the period of time on and following the time of sale to the Buyer (other than liabilities and obligations attributable to any breach of the Seller's representations and warranties set forth in Article VIII or the Seller's covenants set forth in Section 4.2), and (iii) any claims made by any third party for personal injury, death, property damage or otherwise arising from or incidental to the sale of the subject Qualified Spare Transformer to the extent such loss, damage, expense, or claim is caused by any act or omission of the Buyer.

Section 9.6 Survival of Representations and Warranties. For purposes of the indemnities contemplated by Section 9.5, the representations and warranties set forth in Article VIII shall survive the consummation of any sale pursuant to the terms of Article IV until the second anniversary of the consummation of such sale, except for those representations and warranties set forth in Sections 8.2 and 8.5, which representations and warranties shall survive indefinitely.

ARTICLE X

WITHDRAWAL

Section 10.1 Withdrawal Procedure. On and following such time as a Party becomes a member of a particular Equipment Class, a Party may withdraw as a member of such Equipment Class under this Agreement only if on or before the date that is two (2) years prior to the date of such Party's desired date of withdrawal it delivers to the Equipment Committee and the relevant Equipment Sub-Committee a written notice of its intention to withdraw as a member of such Equipment Class; provided, however, that following its Effective Date, a Party may withdraw as a member of a particular Equipment Class without notice, by delivering a written notice to such effect to the Equipment Committee and the relevant Equipment Sub-Committee, in the event that, prior to such Party's withdrawal, such Equipment Class does not have at least three members, inclusive of such Party.

Section 10.2 Effectiveness of Withdrawal. A Party shall be deemed to have withdrawn from this Agreement only after it has withdrawn from each Equipment Class in which it was a member pursuant to the provisions of Section 10.1 hereof. Notwithstanding a Party's withdrawal from an Equipment Class or this Agreement, as contemplated hereby, such Party shall continue to enjoy any rights, and shall remain liable for any obligations, that arose or accrued to it under this Agreement prior to the date of any such withdrawal.

ARTICLE XI

CONFIDENTIALITY

Section 11.1 Confidentiality Obligation. Each Party (i) shall maintain the confidentiality of all information provided to it pursuant to the terms of this Agreement, including the information set forth on Exhibit C, and shall take all actions reasonably necessary to ensure that only its Representative, and such other Persons directly involved in the administration and performance of this Agreement by such Party, has access to such information, except as otherwise necessary to enforce its rights or comply with its obligations hereunder, and that its Representative, and such other Persons, shall comply with the provisions of this Article XI, (ii) shall not disclose any such information to any other third parties, unless otherwise provided hereunder, and (iii) agrees to use such information only for such purposes and in such manner as is

contemplated by the terms of this Agreement. Notwithstanding the foregoing, each Party shall be permitted to use any information provided to it under the terms of this Agreement in support of any claim or counterclaim respecting an alleged breach of any other Party's obligations under this Agreement.

Section 11.2 Permitted Disclosures. In the event that a Party is required to provide information that was provided to it in respect of another Party under the terms of this Agreement to the Federal Energy Regulatory Commission, state public utility commission or public service commission, a court, or other governmental authority, such Party shall (i) promptly notify each affected Party, (ii) reasonably cooperate with any such affected Party's request to object to the disclosure of the requested information (unless the disclosing Party is advised by legal counsel that any such request to object would materially prejudice its interest before such governmental authority), and (iii) seek confidential treatment for any such information disclosed. Notwithstanding any other provision of this Agreement to the contrary, each Party acknowledges and agrees that this Agreement and its Exhibits may be filed with any state or federal regulatory agency or commission in connection with securing any Required Regulatory Approvals of any Party hereunder; provided, however, that a Party making any such filing seeks from the applicable agency or commission confidential treatment of the information contained in Exhibit C.

Section 11.3 Exceptions. Notwithstanding any other provision of this Agreement to the contrary, the confidentiality obligations set forth in this Article XI shall not apply to information that (i) is already known or in the possession of the Party receiving such information at the time of disclosure, as evidenced by written documentation, without such Party being bound by a pre-existing, confidentiality agreement or secrecy obligation in respect thereof, (ii) after the time of its disclosure hereunder, becomes subsequently available to such Party on a non-confidential basis from a source not known by such Party to be bound by a confidentiality agreement or secrecy obligation in respect thereof, (iii) is or becomes generally available to the public other than as a result of a breach of the confidentiality obligations set forth in this Article XI, or (iv) is independently developed by a Party without use, directly or indirectly, of any information disclosed under this Agreement, as evidenced by written documentation.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Force Majeure. To the extent that a Party is prevented by an event of Force Majeure from carrying out, in whole or part, any of its obligations under this Agreement, then to the extent of, and only for so long as the duration of, such Force Majeure event, such Party shall be excused from the performance of those of its obligations under this Agreement so affected by such Force Majeure event, provided, that such Party claiming Force Majeure hereunder promptly gives notice and details of such Force Majeure event to the Equipment Committee and uses all commercially reasonable efforts to remedy such Force Majeure event with all reasonable dispatch.

Section 12.2 Assignment. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. No Party shall assign this Agreement in whole or in part, or any of the rights, interests, or obligations hereunder, without the prior written consent of all other Parties that are members of the Equipment Class or Equipment Classes that such Party is then a member of hereunder, except pursuant to the merger, consolidation or sale of all or substantially all of the assets of such Party. No assignment (including by reason of a merger, consolidation or sale of all or substantially all of the assets of any Party), transfer, conveyance, pledge or disposition of rights, interests, duties or obligations under this Agreement by any Party shall relieve such Party from liability and financial responsibility for the performance thereof after any such transfer, assignment, conveyance, pledge or disposition unless and until the transferee or assignee shall agree in writing to assume the obligations and duties of such Party under this Agreement.

Section 12.3 Amendments. This Agreement may be amended, modified or supplemented only by a written instrument executed and delivered by at least two-thirds (66 2/3%) of all Parties that are then parties to this Agreement; provided, however, that any amendment or modification to the terms of Articles III, IV, VIII and IX, Section 2.3, this Section 12.3, and any definitions used in such Articles or Sections, including the definition of Triggering Event and Commitment Formula, may be so amended or modified only by a written instrument executed and delivered by all Parties that are then parties to this Agreement. Any written instrument contemplated by this Section 12.3 may be executed in more than one (1) counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.4 Notices to Parties. All notices and other communications required to be delivered in writing hereunder to a Party shall be deemed given if delivered personally or by facsimile transmission (with confirmation of delivery), or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, or by email transmission (with confirmation of delivery) to the recipient Party at its contact information set forth under its signature on its signature page to this Agreement (or at such other address, facsimile number, or email address, for a Party as shall be designated by such Party in a notice delivered hereunder; provided however, that notices of a change of address, facsimile number, or email address, shall be effective only upon receipt thereof); and provided, further, that in the event of a Triggering Event, a Party may provide notices otherwise required to be delivered hereunder in writing by telephonic means if, to the extent that, and only for so long as, the other means of notice contemplated by this Section 12.4 are unavailable to such Party.

Section 12.5 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any Person, other than the Parties, any rights, interests, obligations or remedies hereunder.

Section 12.6 Interpretation of Agreement. In this Agreement, unless otherwise specified or the context otherwise requires, the singular shall include the plural,

the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." Unless otherwise specified or the context otherwise requires, references to a Section, Article or Exhibit mean a Section, Article or Exhibit of this Agreement and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made. The Article, Section and Exhibit headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement

Section 12.7 Waiver. A waiver of any failure of a Party to comply with any obligation, covenant, agreement, or condition herein by any Party entitled to the benefits thereof shall be effective only by a written instrument signed by such Party granting such waiver, provided, however, that such waiver shall be effective only as between such Parties. In no event shall any such waiver of such obligation, covenant, agreement, or condition operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

Section 12.8 Severability. Each covenant, condition, restriction and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction and other term. If any covenant, condition, restriction or other term of this Agreement is held to be invalid by any court of competent authority or governmental authority with appropriate jurisdiction, the invalidity of such covenant, condition, restriction or other term shall not affect the validity of the remaining covenants, conditions, restrictions or other terms hereof. In such an event, the Parties shall, to the extent possible, negotiate an equitable adjustment to any provision of this Agreement as necessary to effect the purposes of this Agreement.

Section 12.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law principles thereof (except to the extent that such law is preempted by federal law).

Section 12.10 Independent Parties; No Agency. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership among or between the Parties or to impose any partnership or fiduciary obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party, except as expressly provided in this Agreement, including as expressly provided in Section 4.5.

Section 12.11 Counterparts. This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 12.12 Entire Agreement. This Agreement, including the Exhibits attached hereto, embodies the entire agreement and understanding of the Parties

in respect of the obligations and requirements set forth in this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the subject matter contained herein.

IN WITNESS WHEREOF, the Party set forth below has caused this Agreement to be executed and delivered on its behalf by a duly authorized officer as of the date indicated below.

Dated: _____

By: _____

Name:

Title:

The foregoing Party hereby sets forth its Required Regulatory Approvals as required by Section 2.3 of this Agreement:

The foregoing Party hereby provides its contact information as required by Section 12.4 of this Agreement:

EXHIBITS

- Exhibit A **Equipment Classes and Certain Minimum Standards**
- Exhibit B **Required Obligations of Participating Utilities**
- Exhibit C **Committed Qualified Spare Transformers**

Equipment Classes and Certain Minimum Standards

Set forth below is a list of all Equipment Classes. In respect of Qualified Spare Transformers Committed in any Equipment Class, each such Qualified Spare Transformer must satisfy the following two minimum standards: (i) the Qualified Spare Transformer must be an autotransformer (wye to wye), and (ii) the Qualified Spare Transformer must not be Committed in more than one Equipment Class at any one time. In addition, Qualified Spare Transformers must also satisfy the minimum standards, if any, set forth below opposite the Equipment Class in which it is Committed.

<u>Equipment Class</u>	<u>Minimum Standard</u>
500-345	Must be either (i) a three-phase transformer with MVA of 400 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 400 or greater.
500-230	Must be either (i) a three-phase transformer with MVA of 392 or greater, or (ii) a single-phase transformer with MVA of 167 or greater that, when aggregated with any other two single-phase transformers with MVA of 167 or greater Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers.
500-161	To be determined by Equipment Sub-Committee.
500-138	To be determined by Equipment Sub-Committee.
500-115	To be determined by Equipment Sub-Committee.
500-069	To be determined by Equipment Sub-Committee.
345-230	Must be either (i) a three-phase transformer with MVA of 336 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 336 or greater.
345-161	Must be either (i) a three-phase transformer with MVA of 400 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the

Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 400 or greater.

- 345-138 Must be either (i) a three-phase transformer with MVA of 224 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 224 or greater.
- 345-115 If a three-phase transformer, must have MVA of 224 or greater. Single-phase transformer minimum standards are to be determined by Equipment Sub-Committee.
- 230-161 To be determined by Equipment Sub-Committee.
- 230-138 To be determined by Equipment Sub-Committee.
- 230-115 Must be either (i) a three-phase transformer with MVA of 100 or greater, or (ii) any single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 100 or greater.
- 230-069 If a three-phase transformer, must have MVA of 50 or greater. Single-phase transformer minimum standards are to be determined by Equipment Sub-Committee.
- 161-138 To be determined by Equipment Sub-Committee.
- 161-115 To be determined by Equipment Sub-Committee.
- 161-069 To be determined by Equipment Sub-Committee.
- 138-115 To be determined by Equipment Sub-Committee.
- 138-069 Must be either (i) a three-phase transformer with MVA of 50 or greater, or (ii) a single-phase transformer that, when aggregated with any other two single-phase transformers Committed by the Participating Utility or other Participating Utilities, is sufficient to create at least one full bank of such transformers with an aggregate MVA of 50 or greater.
- 115-069 To be determined by Equipment Sub-Committee.

Five Substation Self Assessment															Total										
Company Name	High V	Low V	S-1 # Banks	S-1 MVA	S-1 Phase	S-1 LTC	S-2 # Banks	S-2 MVA	S-2 Phase	S-2 LTC	S-3 # Banks	S-3 MVA	S-3 Phase	S-3 LTC	S-4 # Banks	S-4 MVA	S-4 Phase	S-4 LTC	S-5 # Banks	S-5 MVA	S-5 Phase	S-5 LTC	Class MVA		
New Power & Light	600	250	1	250	3	Yes	1	250	3	Yes	1	250	3	Yes					2	500	3	no	400		
Big Mountain Power	600	250	1	250	3	Yes	1	250	3	Yes	1	250	3	Yes										3325	
Utility One	600	250	2	500	3	Y		500	3	Y	1	500	3	Y	1	500	3	Y	1	500	3	Y		9400	
Blue Water Power	600	250									2	500	3	no	3	500	3		3	500	3			30325	
The Light Company	600	250																	1	500	3	Yes		5787	
West Gas & Light	600	250																				Yes		4240	
Coastal Light Company	600	250									1	560	3	0	1	560	3	0	1	560	3	0		6215	
Nuclear Light	600	250	1	500	3	Y	2	500	3	2	2	250	3		3	250	3	3	1	500	3	0		2091	
National Gas & Light	600	250																		2	500	3	2		2000
Customer First Power	600	250																						1140	
Future Power	600	250	1	250	3	0	1	250	3	0					1	250	3	0						1635	
Black Rock Power	600	250									2	500	1		1	250	1		1	500	1			23177	
Electric Light	600	250	1	250	3	n																		724	
Cheap Power	600	250																						21600	
North South Power	600	250	1	250	3	Y	2	250	3	Y	2	250	3	Y	2	500	3	Y						4900	
Old Power & Light	600	250					1	250	3	1	1	250	3	1	2	250	3	1	1	250	3	1		3800	

Notes on the process:

Step 1 – For each Equipment Class in which a Participating Utility elects to participate, the Participating Utility submits to the Project Manager, on a form provided by the Project Manager, its determination of the MVA needed to restore service to load lost through the destruction of the Participating Utility's five most critical substations in that Equipment Class.

Step 2 – For each Equipment Class, the "Total MVA Needed" for each Participating Utility is calculated by summing the MVA needed to restore service to each of the five substations in the subject Equipment Class.

Step 3 -- The worst case utility is identified as the utility within an Equipment Class with the largest Total MVA Needed. The Worst Case MVA Total is calculated by summing the Total MVA Needed of the worst case utility with the sum of the MVA of the qualified spare transformers that the worst case utility reports that it is willing to share in the subject Equipment Class.

- Step 4 – Calculate Column A for each Participating Utility in subject Equipment Class, by
1. Summing the Total MVA Needed for all Participating Utilities in the Equipment Class; and then
 2. Dividing the Total MVA Needed for each Participating Utility by this Sum; and then
 3. Multiplying this number by the Worst Case MVA Total.

- Step 5 – Calculate Column B for each Participating Utility in subject Equipment Class, by
1. Summing the Total Class MVA for all Participating Utilities in the Equipment Class; and then
 2. Dividing the Total Class MVA for each Participating Utility by this Sum; and then
 3. Multiplying this number by the Worst Case MVA Total.

Step 6 – Calculate each Participating Utility's Required Obligation by Averaging the value recorded in Column A and Column B beside each Participating Utility.

# Banks Needed	Total MVA Needed	Total Class MVA	Company Name	A		
				Obligation MVA Needed	Obligation T MVA Needed	MVA Obligation
2	1000	1400	New Power & Light	213	48	131
3	750	3325	Big Mountain Power	160	114	137
6	3000	9400	Utility One	640	323	481
5	2500	30325	Blue Water Power	533	1042	788
1	500	5787	The Light Company	107	199	153
0	0	4240	West Gas & Light	0	146	73
3	1680	6215	Coastal Light Compar	358	214	286
9	3250	4000	Nuclear Light	693	137	415
2	1000	2000	National Gas & Light	213	69	141
0	0	1140	Customer First Power	0	39	20
3	750	1635	Future Power	160	56	108
4	1750	23177	Black Rock Power	373	797	585
1	250	724	Electric Light	53	25	39
0	0	21600	Cheap Power	0	742	371
7	2250	4900	North South Power	480	168	324
5	1250	3800	Old Power & Light	267	131	199
Total	51	19930	123668	4250	4250	4250
Worst Case MVA	3250					
Worst Care Spare	1000					
Worst Care Spare						
Worst Care Spare						
Worst Case MVA Total		4250				

Worst Case MVA
 Worst Care Spare
 Worst Care Spare
 Worst Care Spare
 Worst Case MVA Total

Notes on obligation calculation using New Power & Light as an example:

Column C indicates the total MVA obligation for each utility listed.

New Power & Light (Total Obligation) = (213 + 48) / 2 = 131

Column A calculation is the obligation for the total MVA a company needs to rebuild after losing its five most critical substation in New Power & Light (MVA needed obligation) = (1000 / 19930) X 4250 = 213

Column B calculation is the obligation for the total in-service MVA a company has in a voltage class.

New Power & Light (MVA in-service obligation) = (1400 / 123668) X 4250 = 48

19930 is the total of MVA of all utilities participating in the class.

4250 is the total worst case MVA needed. This is the sum of the actual worst case MVA needed (in this example

EXHIBIT C

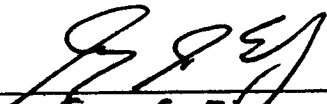
Committed Qualified Spare Transformers

[To Be Provided by Participating Utilities following Calculation of Required Obligations]

IN WITNESS WHEREOF, the Party set forth below has caused this Agreement to be executed and delivered on its behalf by a duly authorized officer as of the date indicated below.

Avista Corporation

Dated: April 13, 2006

By: 
Name: Gary G. Ely
Title: Chairman of the Board,
President & CEO

The foregoing Party hereby sets forth its Required Regulatory Approvals as required by Section 2.3 of this Agreement:

None

The foregoing Party hereby provides its contact information as required by Section 12.4 of this Agreement:

Richard L. Vermeers
(509) 495-8057
rick.vermeers@avistacorp.com

ATTACHMENT A

A LIST OF THE SIGNATORIES TO THE SPARE TRANSFORMER AGREEMENT

**List of Electric Utilities that
Signed the Sharing Agreement as of July 17, 2006:**

1. Allegheny Power
2. Ameren Services Company on behalf of Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company and Illinois Power Company
3. American Electric Power Service Corporation
4. American Transmission Company LLC
5. Arizona Public Service Company
6. Atlantic City Electric Company (Pepco Holdings, Inc.)
7. Avista Utilities
8. Baltimore Gas & Electric (Constellation Energy)
9. CenterPoint Energy Houston Electric, LLC
10. Cinergy Corporation (now part of Duke Energy Corporation)
11. Commonwealth Edison Company (Exelon Corporation)
12. Consolidated Edison Company of New York, Inc.
13. Delmarva Power and Light Company (Pepco Holdings, Inc.)
14. Duke Power, a division of Duke Energy Corporation (now Duke Power Company LLC)
15. FirstEnergy Corporation on behalf of Ohio Edison Company, Pennsylvania Power Company, The Toledo Edison Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and The Cleveland Electric Company
16. Florida Power & Light Company
17. Indianapolis Power and Light Company
18. International Transmission Company d/b/a ITC Transmission
19. Kansas City Power and Light Company
20. Michigan Electric Transmission Company, LLC (A Trans-Elect Enterprise)
21. MidAmerican Energy Company
22. New England Power Company (National Grid)
23. Niagara Mohawk Power Corporation (National Grid)
24. Northeast Utilities Service Company on behalf of Connecticut Light and Power Company, Western Massachusetts Electric Company and Public Service Company of New Hampshire
25. Oklahoma Gas and Electric Company
26. Pacific Gas and Electric Company
27. PECO Energy Company (Exelon Corporation)
28. Potomac Electric Power Company (Pepco Holdings, Inc.)
29. PPL Electric Utilities Corporation
30. Progress Energy Carolinas
31. Progress Energy Florida
32. Public Service Company of New Mexico (PNM Resources)
33. Public Service Electric and Gas Company
34. Puget Sound Energy, Inc.
35. San Diego Gas & Electric Company
36. Sierra Pacific Resources
37. Southern California Edison Company (An Edison International Company)

38. Southern Company as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Georgia Transmission Company, City of Dalton, Georgia and Municipal Electric Authority of Georgia
39. Tampa Electric Company
40. Texas-New Mexico Power Company (PNM Resources)
41. TXU Electric Delivery Company
42. Virginia Electric and Power Company
43. Xcel Energy Services Inc. as agent for Northern States Power Company Minnesota, Northern States Power Company Wisconsin, Public Service Company of Colorado and Southwestern Public Service Company

ATTACHMENT B
LIST OF ENTITIES THAT PARTICIPATED
IN THE DISCUSSIONS LEADING TO THE
SPARE TRANSFORMER EQUIPMENT PROGRAM

**Participants in the Discussions Leading to the
Development of the Spare Transformer Equipment Program**

Allegheny Power

Alliant Energy

Ameren Service Company

American Electric Power

American Transmission Company, LLC

Aquila

Arizona Public Service Company

Austin Energy

Avista Utilities

Baltimore Gas & Electric (Constellation Energy)

Bonneville Power Administration

British Columbia Transmission Corp.

CenterPoint Energy Houston Electric, LLC

Central Hudson Gas & Electric

Cinergy Corporation (now part of Duke Energy Corporation)

Cleco

Consolidated Edison Company of New York, Inc.

Duke Energy Corporation

El Paso Electric

Exelon

FirstEnergy Corporation

Florida Power & Light

Hydro One

Indianapolis Power & Light Company

International Transmission Company d/b/a/ ITC Transmission

**Participants in the Discussions Leading to the Development of the Spare
Transformer Equipment Program**
Page 2



Kansas City Power & Light Company

LG&E

Lower Colorado River Authority

Michigan Electric Transmission Company, LLC (A Trans-Elect Enterprise)

MidAmerican Energy Company

National Grid

Nevada Power

Northeast Utilities Service Company

Northwestern Energy

NStar

Oklahoma Gas & Electric Company

Orange & Rockland Utilities

Otter Tail Power

Pacific Gas & Electric Company

Pepco Holdings, Inc.

PPL Electric Utilities

Progress Energy Carolinas

Progress Energy Florida

Public Service Company of New Mexico (PNM Resources)

Public Service Electric & Gas Company

Puget Sound Energy. Inc.

San Diego Gas & Electric Company

Santee Cooper

SCANA

**Participants in the Discussions Leading to the Development of the Spare
Transformer Equipment Program**
Page 3



Sierra Pacific Resources

Southern California Edison Company (An Edison International Company)

Southern Company

Tampa Electric Company

Trans-Elect

Tucson Electric Power

TXU Electric Delivery Company

United Illuminating

Vectren

Westar

Wisconsin Public Service

Xcel Energy Services Inc. (on behalf of Xcel Energy Operating Companies)



American Public Power Association

Canadian Electricity Association

Edison Electric Institute

Electric Power Research Institute

North American Electric Reliability Council

National Rural Electric Cooperative Association

ATTACHMENT C

SUMMARY OF THE PRINCIPAL TERMS OF THE SPARE TRANSFORMER EQUIPMENT PROGRAM

**SUMMARY OF PRINCIPAL TERMS OF
THE SPARE TRANSFORMER SHARING AGREEMENT**

Please note that the following summary is qualified in its entirety by reference to the actual terms of the Sharing Agreement.

Scope

- Universal, binding Sharing Agreement pursuant to which participating utilities agree to commit spare transformers, by voltage class, so that in the event of a clearly defined triggering event, an affected member of a particular voltage class has a call right to purchase spare transformers committed by other participating utilities in such voltage class.

Parties

- Any entity willing to commit one or more spare transformers equal to its required obligation of MVA calculated pursuant to the commitment formula set forth in the Sharing Agreement.
- Sharing Agreement provides flexibility for utilities to participate on the holding company level, operating company level or other affiliate level. In addition, Sharing Agreement allows any utility that may want to partner with others to secure rights to own or access a spare transformer to participate in the Sharing Agreement as a group, either through the Pooled Inventory Management (PIM) organization or pursuant to any other bilateral arrangement.
- Upon its execution and delivery of the Sharing Agreement, a party is obligated to pay a one-time, initial fee of \$10,000 and use its commercially reasonable efforts to secure any necessary regulatory approvals.

Participating Utilities

- No party owes any obligations in respect of committing or acquiring any spare transformers (and consequently has no rights to call on any spare transformer committed under the Sharing Agreement) until it first becomes a participating utility.
- A party does not become a participating utility until it secures any necessary regulatory approvals and agrees to participate in an voltage class with two or more other participating utilities that have secured their respective regulatory approvals.
- Each participating utility selects those voltage classes in respect of which, pursuant to the commitment formula, the required obligation for each such participating utility is calculated.

**SUMMARY OF PRINCIPAL TERMS OF
THE SPARE TRANSFORMER SHARING AGREEMENT**

Page 2

Required Obligation

- The Equipment Sub-Committee for each voltage class will calculate the required obligation for the members of its voltage class in respect of each measurement date, beginning with the initial measurement date of June 30, 2008.
- The required obligation is a number of qualified spare transformers that represents the MVA calculated for a particular participating utility based on an average of (i) the MVA necessary to address the requirements of the voltage class member with the greatest need multiplied by the ratio of the amount of MVA such participating utility requires to respond to an S-5 contingency to the aggregate needs of all members of the voltage class under the same circumstances, and (ii) the MVA necessary to address the requirements of the voltage class member with the greatest need multiplied by the ratio of the amount of such participating utility's total connected MVA in the relevant voltage class to the aggregate connected MVA in the relevant voltage class of all members of such voltage class.
- If, upon becoming a participating utility, a participating utility owns, or has rights to own or access, any spare transformers, it must immediately commit one spare transformer under the Sharing Agreement up to its required obligation calculated for the next measurement date.
- In addition, on or before such measurement date, each participating utility must commit (or, if necessary, acquire and commit) one or more additional spare transformers under the Sharing Agreement so that on such measurement date it will have committed an aggregate number of spare transformers equal to or greater than its required obligation. This, in effect, gives a participating utility that does not yet own a sufficient number of spare transformers a grace period, through such measurement date, to acquire such additional spare transformers.
- Thereafter, the Equipment Sub-Committee for each voltage class will recalculate the required obligations of the members of its voltage class for each succeeding measurement date (June 30 of each year following 2008).
- Each participating utility is obligated to commit (or, if necessary, acquire and commit) in respect of each succeeding measurement date an aggregate number of spare transformers under the Sharing Agreement equal to or greater than its then-existing required obligation.

SUMMARY OF PRINCIPAL TERMS OF THE SPARE TRANSFORMER SHARING AGREEMENT

Page 3

Triggering Event

- In committing spare transformers under the Sharing Agreement, each participating utility agrees to sell any such committed spare transformers to any other qualified participating utility in its voltage class pursuant to a properly exercised call right at a set purchase price upon the occurrence of a triggering event.
- A triggering event occurs when there is one or more coordinated acts of deliberate terrorism, as defined in the Homeland Security Act, resulting in both the destruction or long-term disabling of one or more electric transmission substations and a declaration of a state of emergency by the President pursuant to the National Emergencies Act.

Call Rights

- A participating utility is qualified to exercise a call right if it is in compliance with its obligations under the Sharing Agreement, has suffered the loss or long-term disabling of one or more substations in connection with a triggering event, and, after taking all actions necessary to use all spare transformers that it may own or otherwise have rights to own or access, it is still unable to satisfy an N-0 contingency.
- A participating utility's call right is limited to a number of spare transformers that is sufficient to restore its system to satisfy an N-0 contingency.
- A participating utility receiving a call notice (a seller) may object if the participating utility delivering the call notice (a buyer) is not qualified to exercise a call right, if seller has also suffered the destruction or long-term disabling of one or more substations that is then still affecting seller, or if it would be inequitable to require the sale because seller has received more than one call notice for the same spare transformer or it has received multiple call notices in respect of the same triggering event while other participating utilities in the same voltage class have not received any call notices.
- Any such objection, as well as any other dispute surrounding the exercise of call rights, is referred immediately to the Executive Committee for resolution.
- If the Executive Committee fails to resolve the matter, or if a participating utility objects to a decision made by the Executive Committee, such

SUMMARY OF PRINCIPAL TERMS OF THE SPARE TRANSFORMER SHARING AGREEMENT

Page 4

participating utility is free to exercise any legal or equitable remedy available to it.

- Spare transformers are purchased FOB from seller's location; buyer bears risk of loss from point of purchase.
- Spare transformers are sold subject to permitted encumbrances (which include a broad range of financing and other liens encumbering the subject spare transformer), with seller responsible for causing such encumbrances to be removed or satisfied in a timely manner and indemnifying buyer in respect of the same.
- Sales of spare transformers pursuant to properly exercised call rights under the Sharing Agreement include mutual indemnities between seller and buyer that are typical of transactions of this nature.

Purchase Price

- The purchase price is, at seller's election, either the subject spare transformer's net book value or its replacement cost, plus seller's load-out and transportation costs and its tax liability attributable to the sale of such spare transformer at the purchase price.
- Net book value is to be determined in accordance with seller's standard practice, so long as it conforms to U.S. GAAP, and replacement cost is meant to include all reasonably incurred costs or expenses to replace the subject spare transformer with one of like specifications.
- Seller and buyer will use an estimated purchase price at the time of sale, subject to true-up with a final purchase price to be calculated within six months following the sale.

Transformer Specifications

- Exhibits to the Sharing Agreement will set forth initial minimum specifications for qualified spare transformers in each voltage class.
- Transformer specifications may be revised, from time to time, for an voltage class by the relevant Equipment Sub-Committee.

SUMMARY OF PRINCIPAL TERMS OF THE SPARE TRANSFORMER SHARING AGREEMENT

Page 5

Committed Spare Transformers

- Upon committing a spare transformer under the Sharing Agreement, each participating utility must specifically schedule the spare transformer being committed and whether it owns such transformer outright or whether it has rights to own or access such transformer with other parties.
- In general, in order for a spare transformer to which a participating utility has rights to own or access with other parties to be counted as "committed" under the Sharing Agreement, all such other parties must be or become participating utilities. In addition, the Sharing Agreement provides that all such participating utilities grant each other a power of attorney so that any one of such participating utilities is able to consummate a sale of a spare transformer pursuant to a properly exercised call right.
- Schedules are to be updated to account for participating utilities' newly acquired, replacement spare transformers committed under the Sharing Agreement and incremental spare transformers acquired by participating utilities and committed under the Sharing Agreement.
- Schedules are to be shared with all participating utilities, with updated schedules to be distributed to all participating utilities on a regular basis, all subject to the Sharing Agreement's confidentiality provisions.

Maintenance and Replacement

- Spare transformers committed under the Sharing Agreement are to be maintained in accordance with Good Utility Practices.
- Participating utilities pledge to maintain spare transformers with no less care than that given to their own equipment in general.
- Sharing Agreement provides participating utilities with flexibility to continue to use committed spare transformers in the ordinary course to replace their own inventory, to make such spare transformers available to others through voluntary mutual assistance programs and similar arrangements, and to effect other permitted dispositions.
- To remain qualified to exercise a call right following a permitted disposition, however, a participating utility must, no later than 18 months following such disposition, replace the spare transformer so disposed of

SUMMARY OF PRINCIPAL TERMS OF THE SPARE TRANSFORMER SHARING AGREEMENT

Page 6

with a replacement spare transformer that it commits under the Sharing Agreement.

Governance under Sharing Agreement

- Sharing Agreement provides for (i) an overall Equipment Committee, (ii) an Equipment Sub-Committee for each voltage class, and (iii) an eleven-member Executive Committee, comprised of eight members who must each represent a particular geographic area covered by one or more regional reliability entities, one member who must represent smaller participating utilities, and two at-large members.
- Each participating utility is entitled to appoint a representative to the Equipment Committee and to the Equipment Sub-Committee for any voltage class to which such participating utility belongs.
- Equipment Committee, on an annual basis, elects eleven participating utilities satisfying the criteria described above to appoint the members of the Executive Committee.
- Equipment Committee and Equipment Sub-Committees are charged with making various technical decisions under the Sharing Agreement. Decisions of the Equipment Committee or any Equipment Sub-Committee can be appealed to Executive Committee.
- Executive Committee is also charged with addressing disputes relating to call rights under the Sharing Agreement and developing an annual budget and dues assessment.
- If the Executive Committee fails to render a decision on a disputed matter or if a participating utility objects to a decision made by the Executive Committee, such participating utility is free to exercise any legal or equitable remedy available to it.
- Members of the Equipment Committee and each Equipment Sub-Committee vote in accordance with a weighted voting formula based on the MVA of the spare transformers actually committed under the Sharing Agreement by the participating utility that such member represents; members of the Executive Committee each have one vote.

SUMMARY OF PRINCIPAL TERMS OF THE SPARE TRANSFORMER SHARING AGREEMENT

Page 7

Remedies; Limitation on Damages

- So long as a participating utility is in breach of its obligations under the Sharing Agreement, it is not qualified to exercise a call right.
- Sharing Agreement provides for specific performance, to which each participating utility consents, in respect of any refusal to consummate a sale of a spare transformer pursuant to a properly exercised call notice.
- Each party reserves its rights to pursue all available legal and equitable remedies, subject, in all cases, to a limitation on damages that prohibits indirect or consequential damages and provides that the amount of any compensatory damages shall be limited to 150% of the purchase price of the spare transformer at issue.

Cost Sharing

- Legal, project management and other administrative costs will be shared by participating utilities through an annual budget and dues mechanism.
- Annual budget and amount of dues are determined by Executive Committee, however, parties are excused from paying dues during the year in which they pay their initial fee.

Withdrawal

- Generally, a participating utility may withdraw its membership from an voltage class only upon a minimum of two year's prior written notice to the Equipment Committee and the relevant Equipment Sub-Committee.
- A participating utility may withdraw from the Sharing Agreement only after it properly withdraws from all voltage classes to which it belonged.

General Provisions

- Sharing Agreement includes confidentiality provisions that are typical of a transaction of this nature, limiting the sharing and disclosure of information provided by participating utilities.
- Sharing Agreement includes a standard force majeure provision.
- Sharing Agreement makes clear that there are no intended third party beneficiaries and no partnership or agency relationships established,

**SUMMARY OF PRINCIPAL TERMS OF
THE SPARE TRANSFORMER SHARING AGREEMENT**

Page 8

except for the powers of attorney described above that are used in connection with properly exercised call rights.

- Governing law is State of New York, except to the extent preempted by federal law.
- In general, the Sharing Agreement may be amended by a written instrument executed and delivered by at least two-thirds of all parties to the Sharing Agreement, provided, however, that amendments to provisions relating to the triggering event, commitment formula, commitment obligations, call rights, and liabilities require unanimous written consent of all such parties.

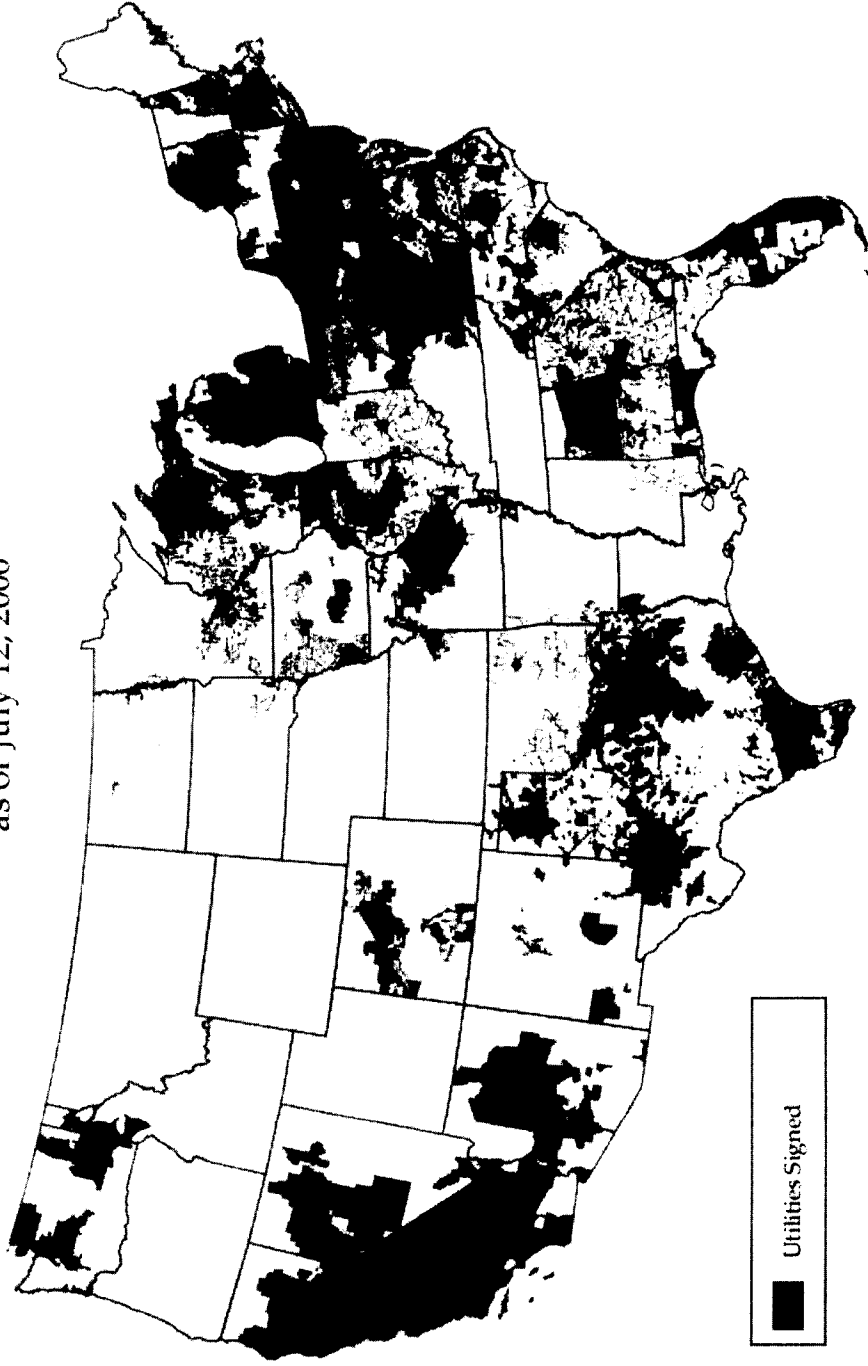
ATTACHMENT D

MAP SHOWING THE SCOPE OF THE TRANSMISSION SYSTEMS THAT HAVE JOINED THE SPARE TRANSFORMER EQUIPMENT PROGRAM



Spare Transformer Sharing Agreement

as of July 12, 2006



Signatories as of July 12 collectively own about 62% of Tx to Tx transformers in the U.S.

ATTACHMENT E

SERVICE LIST

**SPARE TRANSFORMER SHARING AGREEMENT SIGNATORIES
SERVICE LIST FOR FERC FILING
JULY 18, 2006**

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**SPARE TRANSFORMER SHARING AGREEMENT SIGNATORIES
SERVICE LIST FOR FERC FILING
JULY 18, 2006**

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JULY 18, 2006**

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ATTACHMENT F

A FORM OF NOTICE OF FILING

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Edison Electric Institute on behalf of)
the Jurisdictional Signatories to the)
Spare Transformer Sharing Agreement)

Docket Nos. EC06-____-000
and EL06-____-000

**NOTICE OF APPLICATION TO AUTHORIZE DISPOSITION
OF JURISDICTIONAL FACILITIES AND
REQUEST FOR DECLARATORY ORDER**

(July __, 2006)

Take notice that on July 18, 2006, the Edison Electric Institute (“EEI”), on behalf of the FERC-jurisdictional public utility signatories to the Spare Transformer Sharing Agreement (“Agreement”) dated March 15, 2006 (the “Applicants”), submitted for filing an application for advance authorization for future sales and acquisition of jurisdictional facilities involving as yet to be determined Applicants pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission’s Regulations and a petition for a declaratory order concerning the scope of the Commission’s authority over certain transfers anticipated by the agreement and the rate treatment of costs that the Applicants incur to implement the Agreement. The Section 203 authorization will apply to dispositions of jurisdictional facilities whereby the Applicants will transfer transformers to utilities that have service disrupted in the event of a terrorist attack. The Applicants also request a declaratory order granting certain rate assurances for costs incurred under the Agreement, clarifying the need for Section 203 authorization for certain transactions under the Agreement, and stating that the Commission’s order will be made applicable to future FERC-jurisdictional signatories upon notice to the Commission. The Applicants request the Commission to issue an order by August 17, 2006, which is within the 60 day time limit for filings that do not raise competitive issues.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to

the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an "eSubscription" link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Magalie R. Salas
Secretary