MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

|  |  |
| --- | --- |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“\_\_\_\_\_\_\_” or “Party A”) | Name: **Central Virginia Electric Cooperative** (“CVEC” or “Party B”) |
| All Notices:  Street:  City: Zip:  Attn:  Phone:  Facsimile: | All Notices:  Central Virginia Electric Cooperative P.O. Box 247 Lovingston, VA 22949 Attn: Contract Administration – Vice President of Engineering & Operations Phone: 434-263-8336, ext. 1102 Facsimile: 434-263-7919 |
| Duns:  Federal Tax ID Number: | Duns: 00-483-0279 Federal Tax ID Number: 54-0164798 |
| **Invoices:** Attn:  Phone:  Facsimile:  Email: | **Invoices:** Attn: Accounts Payable Phone: 434-263-7919, ext. 1232 Facsimile: 434-263-7919 Email: |
| **Scheduling:** Attn:  Phone:  Facsimile:  Email: | **Scheduling:** Attn: Vice President of Engineering & Operations Phone: 434-263-8336, ext. 1102 Facsimile: 434-263-7919 Email: |
| **Payments:** Attn:  Phone:  Facsimile:  Email: | **Payments:** Attn: Vice President of Customer Service & Finance Phone: 434-263-8336, ext. 1101 Facsimile: 434-263-7919 Email: |
| **Wire Transfer:** BNK:  ABA:  ACCT: | **Wire Transfer:** BNK: N/A ABA: N/A ACCT: N/A |
| **Credit and Collections:** Attn:  Phone:  Facsimile:  Email: | **Credit and Collections:** Attn: Vice President of Customer Service & Finance Phone: 434-263-8336, ext. 1101 Facsimile: 434-263-7919 Email: |
| With additional Notices of an Event of Default or Potential Event of Default to:  Attn:  Phone:  Facsimile:  Email: | With additional Notices of an Event of Default or Potential Event of Default to:  Attn: President & CEO Phone: 434-263-8336, ext. 1100 Facsimile: 434-263-7919 Email: |

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A: Tariff Dated Docket Number

Party B: Tariff Dated Docket Number

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Article Two** |  | | | |
| Transaction Terms and Conditions | [x] Optional provision in Section 2.4. If not checked, inapplicable. | | | |
| **Article Four** |  | | | |
| Remedies for Failure  to Deliver or Receive | [x] Accelerated Payment of Damages. If not checked, inapplicable. | | | |
| **Article Five** | Cross Default for Party A: | | | |
| Events of Default; Remedies | [x] Party A: | | Cross Default Amount: $**[To be negotiated]** |
|  | [] Other Entity: | | Cross Default Amount: $\_\_\_\_\_\_\_\_ |
|  | Cross Default for Party B: | |  |
|  | [x] Party B: CVEC | | Cross Default Amount: $5,000,000 |
|  | [] Other Entity: | | Cross Default Amount $ |
|  | 5.6 Closeout Setoffs | | | |
|  | [] Option A (Applicable if no other selection is made.) | | | |
|  | [] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: | | | |
|  | [x] Option C (No Setoff) | | | |
| **Article 8** | 8.1 Party A Credit Protection: | | | |
| Credit and Collateral Requirements | (a) Financial Information: | | | |
|  | [x] Option A [] Option B Specify:  [] Option C Specify: | | | |
|  | (b) Credit Assurances: | | | |
|  | [] Not Applicable [x] Applicable | | | |
|  | (c) Collateral Threshold: | | | |
|  | [x] Not Applicable [] Applicable | | | |
|  | If applicable, complete the following: | | | |
|  | Party B Collateral Threshold: | | | |
|  | Party B Independent Amount: | | | |
|  | Party B Rounding Amount: | | | |
|  | (d) Downgrade Event: | | | |
|  | [] Not Applicable [x] Applicable | | | |
|  | If applicable, complete the following: | | | |
|  | [] It shall be a Downgrade Event for Party B if Party B’s Credit Rating falls below \_\_\_\_\_\_\_\_\_\_ from S&P or \_\_\_\_\_\_\_\_\_\_ from Moody’s or if Party B is not rated by either S&P or Moody’s | | | |
|  | [x] Other:  Specify: It shall be a Downgrade Event for Party B if Party B fails to maintain a TIER [times interest earned ratio] of 1.25x per loan agreement with Party B’s lenders. | | | |
|  | (e) Guarantor for Party B: None | | | |
|  | Guarantee Amount: N/A | | | |
|  | 8.2 Party B Credit Protection: | | | |
|  | (a) Financial Information: | | | |
|  | [x] Option A [] Option B Specify:  [] Option C Specify: | | | |
|  | (b) Credit Assurances: | | | |
|  | [] Not Applicable [x] Applicable | | | |
|  | (c) Collateral Threshold: | | | |
|  | [x] Not Applicable [] Applicable | | | |
|  | If applicable, complete the following: | | | |
|  | Party A Collateral Threshold: | | | |
|  | Party A Independent Amount: | | | |
|  | Party A Rounding Amount: | | | |
|  | (d) Downgrade Event: | | | |
|  | [] Not Applicable [x] Applicable | | | |
|  | If applicable, complete the following: | | | |
|  | [x] It shall be a Downgrade Event for Party A, if Party A’s, or its Guarantor’s, Credit Rating falls below BBB- from S&P or Baa3 from Moody’s or if Party A, or its Guarantor, ceases to be rated by either S&P or Moody’s. | | | |
|  | [] Other:  Specify: | | | |
|  | (e) Guarantor for Party A: [*A parental guarantee will be required*] | | | |
|  | Guarantee Amount: [*As mutually agreed by the parties*] | | | |
| **Article 10** |  | | | |
| Confidentiality | [x] Confidentiality Applicable | If not checked, inapplicable. | | |
| **Schedule M** |  | | | |
|  | [] Party A is a Governmental Entity or Public Power System | | | |
|  | [] Party B is a Governmental Entity or Public Power System | | | |
|  | [] Add Section 3.6. If not checked, inapplicable | | | |
|  | [] Add Section 8.4. If not checked, inapplicable | | | |
| **Other Changes** | **This Master Power Purchase and Sale Agreement incorporates by reference the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.** | | | |
|  |  | | | |

The Parties hereby further agree that the following additional changes shall be made to the General Terms and Conditions of the Master Power Purchase and Sale Agreement:

ARTICLE ONE: GENERAL DEFINITIONS

## The following definitions are amended as set forth below:

1. Section 1.23, Force Majeure, is deleted in its entirety and replaced with:

“ ‘Force Majeure’ means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the control of, or the result of acts or omissions by, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price.  Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to ‘force majeure’ or an equivalent term as defined under the Transmission Provider’s tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.  The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.”

2. The following definition is added as Section 1.29A:

“ ‘Merger Event’ means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party or other entity hereunder, or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the resulting entity's creditworthiness is materially weaker than that of such Party or other entity immediately prior to such action.”

3. Section 1.51, the definition of Replacement Price, is amended by adding the phrase “for delivery” in the second line immediately before the phrase “at the Delivery Point, and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

4. Section 1.53, the definition of Sales Price, is amended by (i) deleting the phrase “at the Delivery Point” from the second line, and (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

## Section 2.2: Governing Terms

## The following is added as a separate second paragraph of Section 2.2:

“Party A and Party B confirm that this Master Agreement shall supersede and replace all prior master power purchase and sale agreements, if any, between the parties hereto with respect to the subject matter hereof.Party A and Party B further agree that any transaction for the purchase or sale of electric energy, capacity or other related products which is in effect as of the Effective Date of this Master Agreement or which has delivery obligations that start after the Effective Date of this Master Agreement shall be governed by this Master Agreement, and are part of this single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2.”

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.1: Events of Default

Section 5.1(f) is deleted in its entirety and replaced with the following: “a Merger Event occurs with respect to such Party;”

Section 5.1(h)(ii) is amended to delete the following phrase from the third and fourth lines thereof: “and such failure shall not be remedied within three (3) Business Days after written notice”.

Section 5.1, Events of Default shall be amended by adding the following new subsection (i) to the end of Section 5.1:

“(i) the unexcused failure of a Party to meet its obligation to provide (through Scheduling or delivery or nomination, etc.) or receive all or part of the Product pursuant to the terms and conditions specified in the Confirmation, provided such unexcused failure occurs over a period of seven (7), or more, consecutive days.”

Section 5.2: Declaration of an Early Termination Date and Calculation of Settlement Amounts

Section 5.2 is amended to delete the following phrase from the last two lines: “under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable” and replace it with the following phrase: “under applicable law on the Early Termination Date, then each such Transaction (individually, an “Excluded Transaction” and collectively, the “Excluded Transactions”) shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Excluded Transactions shall be calculated in accordance with Section 5.3 below.”

The following shall be added to the end of Section 5.2:

“The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non- Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Notwithstanding the foregoing, the Non-Defaulting Party (or its agent) shall first make a Good Faith effort to determine its Gains and Losses solely by reference to quotations (either firm or indicative) of relevant rates or prices supplied by one or more third parties. In the event that subsequent to such Good Faith effort, the Non-Defaulting Party (or its agent) reasonably believes that it cannot reasonably determine its Gains and Losses by reference to such quotations from third parties, the Non-Defaulting Party may determine in Good Faith its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. ‘Good Faith’ for purposes of this Section 5.2 shall mean honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.”

Section 5.3: Net Out of Settlement Amounts

Section 5.3 is amended by deleting in the last sentence the phrase “to or due from the Non-Defaulting Party as appropriate” and replacing it with the phrase “and paid in accordance with Section 5.4 below.”

Section 5.4: Notice of Payment of Termination Payment

Section 5.4 is amended by adding the following sentence at the end thereof:

“Notwithstanding anything to the contrary in this Agreement, in determining the Termination Payment, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount that is derived from a calculation of the future economic gains or losses (present value or otherwise) from the Terminated Transaction(s).”

ARTICLE SEVEN: LIMITATIONS

Section 7.1: Limitation of Remedies, Liability and Damages

Section 7.1 shall be amended by adding “set forth in this Agreement” in the fifth sentence after “indemnity provision” and before “or otherwise”.

The following sentence shall be added at the end of Section 7.1: “The Parties agree that this Section 7.1 shall not limit in any way either Party’s right to exercise the remedies set forth in Articles 4 and 5 of this Master Agreement or to recover the damages provided by such articles.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

Section 8.1: Party A Credit Protection

Section 8.1(a) shall be amended as follows: delete the phrase “and prepared in accordance with generally accepted accounting principles” and replace with the phrase “and prepared in accordance with the requirements of the system of accounts prescribed by the Rural Utilities Service.”

Section 8.1(d) shall be amended as follows: after the comma in line five, add the phrase “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing”.

Section 8.2: Party B Credit Protection

Section 8.2(d) shall be amended as follows: after the comma in line five, add the phrase “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing”.

ARTICLE TEN: MISCELLANEOUS

Section 10.5: Assignment

The second line of Section 10.5 shall be amended by deleting the phrase “which consent may be withheld in the exercise of its sole discretion” and replace it with the phrase “which consent shall not be unreasonably withheld”.

The following shall be added at the end of Section 10.5:

“Notwithstanding the foregoing, Party B, without the approval of Party A, may assign, transfer, mortgage or pledge this Agreement to create a security interest for the benefit of the United States of America, acting through the Administrator of the Rural Utilities Service (the “Administrator”). Thereafter, the Administrator, without the approval of Party A, may (i) cause this Agreement to be sold, assigned, transferred or otherwise disposed of to a third party pursuant to the terms governing such security interest, or (ii) if the Administrator first acquires this Agreement pursuant to 7 U.S.C. § 907, sell, assign, transfer or otherwise dispose of this Agreement to a third party; provided, however, that in either case (a) Party B is in default of its obligations to the Administrator that are secured by such security interest and the Administrator has given Party A notice of such default; and (b) the Administrator has given Party A thirty days’ prior notice of its intention to sell, assign, transfer or otherwise dispose of this Agreement indication of the identity of the intended third-party assignees or purchaser. No permitted sale, assignment, transfer or other dispositions shall release or discharge of Party B from its obligations under this Agreement. Any permitted sale, assignment, transfer or other dispositions to third-party assignees or purchaser shall be subject to such third-party assignees or purchaser first posting collateral acceptable to Party A or Party B, as appropriate, in accordance with Article VIII.”

Section 10.8: General

Section 10.8 is amended by adding the following to the end thereof:

“Each Party authorizes the other Party to affix an ink or digital stamp of its own signature to any Confirmation and agrees to be bound by a document executed in such a manner. This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument.  Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

Section 10.10: Forward Contract

Section 10.10 shall be amended by adding the following at the end thereof:

“Each Party further agrees that, for the purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

Section 10.11: Confidentiality

Section 10.11 shall be amended to add the following: (i) in the third line, the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party”; (ii) in the third line, the phrase “or the Party’s Affiliates’ ” immediately after the phrase “other than the Party’s”; and (iii) in the fourth line, the word “directors” prior to “employees”.

Section 10.11 shall be further amended by adding the following sentence at the end thereof:

“To the extent any information provided by the Parties pursuant to Article 8.1(a) and Article 8.2(a) of this Agreement is not in the public domain, it will be deemed confidential information subject to the non-disclosure obligations in this paragraph.”

The following new sections shall be added at the end of Article Ten:

“10.12 SUBMISSION TO JURISDICTION AND VENUE. THE PARTIES AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE SOUTHERN DISTRICT OF NEW YORK. Each Party (i) waives any objection that it may have to laying of venue of any proceedings brought in any such court; and (ii) waives any claim that such proceedings have been brought in an inconvenient forum.

10.13 Imaged Agreement. Any original executed Agreement, Confirmation, or other related document may be photocopied and stored on computer tapes and disks (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence.

10.14 FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party, or FERC acting *sua sponte*, shall be the ‘public interest’ application of the ‘just and reasonable’ standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008) ( the ‘Mobile-Sierra’ doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the ‘public interest’ application of the ‘just and reasonable’ standard of review and otherwise as set forth in the foregoing section (a).”

10.15 Dodd-Frank Reporting Requirements. In the event this Master Agreement, or any transaction hereunder, requires reporting or recordkeeping under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”), Party A agrees that it shall report all such transactions to the extent they may be required to be reported under applicable law, and Party B agrees to promptly provide to Party A any reasonably necessary information in connection with such reporting. For the avoidance of doubt, each Party shall be responsible for complying with any recordkeeping requirements applicable to it or any transactions as required by law.

10.16 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

(a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:

1. The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
2. If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
3. If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
4. If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties (“Specified Dealers”), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
   * If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
   * If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
   * If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.
5. Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.

“Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events:

1. the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
2. the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
3. the temporary or permanent discontinuance or unavailability of the Price Source;
4. the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
5. a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.

“Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.

“RTO” means any regional transmission operator or independent system operator.

“RTO Transaction” means a Transaction in which the Price Source is an RTO.

“Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.

(b) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.

(c) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.

10.17 WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.”

10.18 PJM Capacity Transactions. If the Parties enter into a Transaction for PJM unit-specific capacity, then the Transaction Confirmation shall include mutually agreeable terms with respect to reporting and scheduling of the unit-specific capacity and shall include provisions indemnifying Buyer for deficiency penalties and charges owed to PJM as a result of a failure by Seller and associated with the capacity that is the basis of the unit-specific capacity transaction; and if such terms and provisions are not included, the Transaction shall be voidable at Buyer’s written election. If the Parties enter into a Transaction for PJM Non-Unit Specific Capacity and the terms of such Transaction require it to be scheduled with PJM, then the following provisions shall apply to the Transaction:

“PJM Non-Unit Specific Capacity Transaction” means a Non-Unit Specific Capacity Transaction as that term is defined in the Reliability Pricing Model (“RPM”) Business Rules of PJM Interconnection, L.L.C. (“PJM”), or any successor document issued by PJM and in effect from time to time (“RPM Rules”), subject to the following terms and conditions:

(a) Payment Terms. Seller will pay charges, and Buyer will receive credits subject to the terms of the Product pursuant to the Transaction Confirmation.

(b) Scheduling. In the event the terms of the Product and Transaction Confirmation require Seller and Buyer to deliver and receive the Product (through scheduling or nomination, etc.), the parties shall accomplish such delivery and receipt by entering and confirming appropriate Non-Unit Specific Capacity Transactions in PJM’s eRPM system, or any successor system, as applicable (“System”). Further, in that event, Seller and Buyer shall use commercially reasonable efforts to cooperate with each other to ensure that such entry and confirmation is completed in a timely manner as per RPM Rules for Non-Unit Specific Capacity Transactions. For purposes of this Transaction, such entry and confirmation by Seller and Buyer into the System shall constitute “Schedule” or “Scheduling” as such terms are defined in the Master Agreement. Notwithstanding whether Seller and Buyer Schedule the Product for a Delivery Period in excess of one (1) month, Section 6.1 of the Master Agreement shall be applicable with respect to payments for the Product. The Delivery Point for a Product scheduled into the System will be the pricing point at which PJM will settle the transaction scheduled by the Parties in the System.

(i) Buyer’s Damages Associated with Seller’s Failure to Timely Schedule. If Seller is required pursuant to the Transaction Confirmation and fails to timely Schedule all or part of a Non-Unit Specific Capacity Transaction, and that failure is not due to Force Majeure and Buyer has fulfilled its obligations under the Product that is the subject of this Transaction, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the NUSCT Replacement Price, and Seller shall reimburse Buyer for any penalties or charges incurred by Buyer as a result of Seller’s Failure to Timely Schedule. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. The remedy set forth herein shall supersede and replace the provisions of Section 4.1 of the Master Agreement and is in addition to the event of default remedy provided in Section 5.1(i) above.

(ii) Seller’s Damages Associated with Buyer’s Failure to Timely Schedule. If Buyer is required pursuant to the Transaction Confirmation and fails to timely Schedule all or part of a Non-Unit Specific Capacity Transaction, and that failure is not due to Force Majeure and Seller has fulfilled its obligations under the Product that is the subject of this Transaction, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the NUSCT Sales Price from the Contract Price, and Buyer shall reimburse Seller for any penalties or charges incurred by Seller as a result of Buyer’s Failure to Timely Schedule. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount. The remedy set forth herein shall supersede and replace the provisions of Section 4.1 of the Master Agreement and is in addition to the event of default remedy provided in Section 5.1(i) above.

(iii) Other Scheduling Provisions.

(1) If the System is unavailable for either Party to Schedule the Product for any reason in any particular month and the Non-Unit Specific Capacity Transaction is not properly credited to Buyer in PJM’s eRPM system, then on the date payment by Buyer is due in respect of the month affected by such unavailability, in addition to Buyer’s obligation to make payment of the Contract Price, Seller shall be obligated to pay to Buyer the NUSCT Replacement Price for the Contract Quantity for the relevant month.

(2) If PJM reverses or terminates the Non-Unit Specific Capacity Transaction Scheduled by the Parties in the System in the event one of the Parties fails to meet its obligations under the OA or Tariff, then (*x*) for each month remaining in the Delivery Period, on the date payment by Buyer is due in respect of that month, in addition to Buyer’s obligation to make payment of the Contract Price, Seller will pay to Buyer the NUSCT Replacement Price for the Contract Quantity for the relevant month, and (*y*), if the failure is by Seller, Seller will also pay to Buyer, within one (1) Business Day of Buyer’s demand, any amounts that were reversed or otherwise not credited to Buyer by PJM as required pursuant to this Transaction for periods of time before the reversal. “OA” and “Tariff” mean the Amended and Restated Operating Agreement of PJM and the PJM Open Access Transmission Tariff, respectively, or any amended or successor documents that are in effect from time to time.

(3) Payments shall be made by Seller in accordance with the payment provisions of Section 6.1 of the Master Agreement and shall be netted in accordance with Section 6.4 of the Master Agreement.

“NUSCT Replacement Price” means the market price for that amount of the Product not timely Scheduled by Seller, which will be determined exclusively by utilizing the price at which PJM settles Non-Unit Specific Capacity Transactions in the System at the Delivery Point for the relevant time period under the eRPM Rules. **BUYER SHALL NOT BE REQUIRED TO UTILIZE OR CHANGE ITS UTILIZATION OF ITS OWNED OR CONTROLLED ASSETS OR MARKET POSITIONS TO MINIMIZE SELLER’S LIABILITY**. For purposes of this Product, this definition of “NUSCT Replacement Price” shall supersede and replace the definition of “Replacement Price” in the Master Agreement.

“NUSCT Sales Price” means the market price for that amount of the Product not timely Scheduled by Buyer, which will be determined exclusively by utilizing the price at which PJM settles Non-Unit Specific Capacity Transactions in the System at the Delivery Point for the relevant time period under the eRPM Rules. **SELLER SHALL NOT BE REQUIRED TO UTILIZE OR CHANGE ITS UTILIZATION OF ITS OWNED OR CONTROLLED ASSETS, INCLUDING CONTRACTUAL ASSETS, OR MARKET POSITIONS TO MINIMIZE BUYER’S LIABILITY**. For purposes of this Product, this definition of “NUSCT Sales Price” shall supersede and replace the definition of “Sales Price” in the Master Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

PARTY A: PARTY B:

[COMPANY] CENTRAL VIRGINIA ELECTRIC

COOPERATIVE

By: By:

Name: Name:

Title: Title:

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER

This confirmation letter shall confirm the “Transaction” set forth below and agreed to on \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Party A”) and Central Virginia Electric Cooperative (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Trade Date:

Master Agreement: EEI Master Power Purchase and Sale Agreement dated , 2012 between Seller and Buyer.

Seller: Party A

Buyer: Party B

**[The following details are to be negotiated on a case-by-case basis.]**

|  |  |
| --- | --- |
| Product: |  |
| Delivery Period: |  |
| Contract Quantity: |  |
| Days and Hours of Delivery: |  |
| Delivery Point: |  |
| RTO Pricing Schedules: |  |
| Contract Price: | **[Any additional mutually agreeable netting/credit provisions for non-scheduled capacity transactions must be included with the Contract Price terms or Calculation Procedures.]** |
| Price Party B Pays: |  |
| Price Party A Pays: |  |
| Calculation Procedures: |  |
| Scheduling and Delivery Procedures: |  |
| Special Provisions: | For the avoidance of doubt: (i) it is the intent of Seller and Buyer that any costs, including, but not limited to, fees, taxes, tariffs, and/or surcharges incurred by Seller, resulting from legislation or regulation relating to CFTC reporting (Dodd-Frank), Green House Gas (GHG) or Carbon Dioxide (CO2) will not affect the Contract Price of this Transaction in any manner and (ii) this Transaction is not tied to, or contingent upon, any specific generation unit(s).  **[If this Transaction is for PJM unit-specific capacity (in addition to scheduling and other mutually agreeable provisions), item (ii) above will be deleted and the following provision shall be included:** “Buyer is hereby indemnified against deficiency penalties and charges owed to PJM as a result of a failure by Seller associated with the capacity that is the basis of this Transaction.”**]** |

This confirmation letter is being provided pursuant to and in accordance with the above-referenced Master Agreement and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Party A: Party B:

[COMPANY] CENTRAL VIRGINIA ELECTRIC

COOPERATIVE

Name: Name:

Title: Title:

Phone No: Phone No:

Fax: Fax:

E-mail: E-mail: