

# Gas Annex to the EEI Master Power Purchase & Sale Agreement

Version 1.1  
7/7/05

**PARAGRAPH 4  
to the  
GAS ANNEX  
to the  
EEI MASTER POWER PURCHASE & SALE AGREEMENT**

**GAS ANNEX ELECTIONS COVER SHEET**

**Paragraph 4. Elections and Variables**

**Name:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ (“\_\_\_\_\_” or “Party A”)

**Name:** \_\_\_\_\_, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ (“Counterparty” or “Party B”)

**Effective Date of EEI Master Agreement between Party A and Party B:** \_\_\_\_\_

**All Notices:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street: \_\_\_\_\_  
City: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**All Notices:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Street: \_\_\_\_\_  
City: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Invoices:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Nominations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Confirmations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Confirmations:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Option Exercise:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Option Exercise:**

As set forth on the EEI Master Agreement Cover Sheet unless otherwise set forth below:

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

---

**Elections for Paragraph Two**

**2.5 Payment Netting**

Option A (Payment Netting with Payment on the 25<sup>th</sup>) - If neither Option A nor Option B is checked, Option A shall be applicable.

Option B (No Payment Netting)

**2.6 Seller Pays Before and At Delivery Point**

Paragraph 2.6 is applicable. If not checked, inapplicable.

---

**Elections for Paragraph Three**

**3.3 Remedies For Failure to Deliver or Receive**

Option A – Spot Price Standard – If neither Option A nor Option B is checked, Option B shall be applicable.

Other Index Applicable to Spot Price Standard, if any: \_\_\_\_\_

Option B – Cover Standard

---

**Other Changes**

Specify, if any:

**GAS ANNEX**  
**TO THE**  
**EEI MASTER POWER**  
**PURCHASE & SALE AGREEMENT**

WHEREAS, Party A and Party B have entered into an EEI Master Power Purchase & Sale Agreement (including without limitation any amendments, annexes or Cover Sheet thereto which are provided for and incorporated into the EEI Master Power Purchase & Sale Agreement, the “EEI Master Agreement”), which EEI Master Agreement governs the terms and conditions pursuant to which the Parties may enter into transactions relating to the purchase and sale of electric capacity, energy and other products related thereto; and

WHEREAS, the Parties desire to enter into this Gas Annex to the EEI Master Agreement to provide for the terms and conditions under which the Parties may enter into Transactions relating to the purchase and sale of natural gas and products related thereto;

NOW, THEREFORE, the Parties agree as follows:

**PARAGRAPH ONE: GENERAL TERMS**

1.1 Scope of Agreement. The Parties agree that they are entering into this Gas Annex to the EEI Master Agreement (this “EEI Gas Annex”) in order to provide for the terms and conditions pursuant to which the Parties may enter into Transactions for Gas Products (as defined below). For purposes of this EEI Gas Annex, “NAESB Gas Contract” shall mean the NAESB Base Contract for Sale and Purchase of Natural Gas, NAESB Standard 6.3.1, dated April 19, 2002. This EEI Gas Annex, together with the Paragraph 4 Gas Annex Elections Cover Sheet (“Paragraph 4 Cover Sheet”), supplements, forms a part of, and is incorporated into, the EEI Master Agreement. Capitalized terms used in this EEI Gas Annex but not defined herein shall have the meanings given such terms in the EEI Master Agreement.

It is intended that the terms set forth in the EEI Master Agreement and this EEI Gas Annex apply to those Transactions that relate to Gas Products (each such Transaction, a “Gas Products Transaction”). Unless otherwise expressly amended pursuant to this EEI Gas Annex, all of the terms and conditions set forth in the EEI Master Agreement shall be applicable to Gas Products Transactions entered into between the Parties. The term “Transaction” as used in the EEI Master Agreement means both Transactions relating to Power Products and Gas Products and except as otherwise provided in this EEI Gas Annex, the EEI Master Agreement shall apply equally to all such Transactions without differentiation. By way of example only, the Parties intend that the occurrence of an Event of Default under Section 5.1 would enable the Non-Defaulting Party to exercise

any or all of the rights in Article Five with respect to all Transactions notwithstanding whether such Transactions are for Gas Products and/or Power Products; and that the collateral provisions agreed to by the Parties in the Collateral Annex to the EEI Master Agreement, if any, shall apply to all Transactions notwithstanding whether such Transactions are for Gas Products and/or Power Products. In the event of any inconsistency among or between the EEI Master Agreement and this EEI Gas Annex, this EEI Gas Annex will govern with respect to Gas Products Transactions only.

**PARAGRAPH TWO: AMENDMENTS TO THE EEI MASTER AGREEMENT**

2.1 Definitions. Article One of the EEI Master Agreement is amended as set forth below:

- (a) Section 1.15 is amended in its entirety to read as follows:

1.15 With respect to Power Products, “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction. With respect to Gas Products, “Delivery Period” has the meaning in Section 2.13 of the NAESB Gas Contract.

- (b) Section 1.23 is amended to add the following sentence at the end of the Section:

This definition of Force Majeure in Section 1.23 shall not apply to Gas Products. In respect of Gas Products, “Force Majeure” has the meaning in Section 11.1 of the NAESB Gas Contract.

- (c) Section 1.47 is amended in its entirety to read as follows:

1.47 “Product” or “Products” means, as the case may require, either or both the Power Products and/or the Gas Products. “Power Product” or “Power Products” mean electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction. “Gas Product” or “Gas Products” mean products involving Gas (as defined in Section 2.18 of the NAESB Gas Contract) or as otherwise specified by the Parties in the Transaction.

- (d) Sections 1.43, 1.44, 1.51 and 1.53 shall be applicable only to Power Products and shall not be applicable to Gas Products.

- (e) Section 1.54 is amended in its entirety to read as follows:

1.54 With respect to Power Products, “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives,

including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point. With respect to Gas Products, Gas shall be deemed to have been Scheduled or to be Scheduled Gas when the provisions in Section 2.25 of the NAESB Gas Contract have been satisfied.

- (f) Section 1.61 is amended to add “or Transporter” after “Transmission Provider”.
- (g) The definitions of “Master Agreement” and “Agreement” on the Cover Page to the EEI Master Power Purchase & Sale Agreement shall include this EEI Gas Annex. References to the Tariffs of Party A and Party B in the Agreement shall only apply to Power Products. Further, after all references to “Article Four” in the EEI Master Agreement shall be added the words “or in respect of Gas Products, Section 3.3 of this EEI Gas Annex.”

2.2 Confirmation. The first sentence of Section 2.3 of the EEI Master Agreement shall be modified by the addition of the following at the end thereof: “with respect to Power Transactions and substantially in the form of Exhibit A to the NAESB Gas Contract with respect to Gas Transactions.”

2.3 Obligations and Deliveries. Sections 3.2 and 3.3 of the EEI Master Agreement shall be applicable only to Power Products. The applicable Transportation, Scheduling and Force Majeure provisions with respect to Gas Products are set forth in Paragraph Three below.

2.4 Remedies For Failure to Deliver/Receive. Sections 4.1 and 4.2 of the EEI Master Agreement shall be applicable only to Power Products. The applicable provisions with respect to Gas Products are set forth in Paragraph Three below.

2.5 Payment and Netting. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option A of this Paragraph 2.5 shall apply.

Option A: Payment Netting with Payment for Power and Gas Transactions on the 25<sup>th</sup>.

Section 6.2 of the EEI Master Agreement is amended to delete the words “twentieth (20<sup>th</sup>) day” in the third line thereof and replace such words with the words: “twenty-fifth (25<sup>th</sup>) day”. Section 6.2, as amended by the preceding sentence, of the EEI Master Agreement shall be applicable to Power Products and Gas Products, it being the intent of the Parties that monthly payments for Power Products shall be netted with monthly payments for Gas Products, all in accordance with Article 6 of the EEI Master Agreement, including without limitation Section 6.4 thereof. For further clarity, it is expressly agreed that, in

addition to the netting of monthly payments in respect of Gas Products and Power Products, if an Early Termination Date is declared by the Non-Defaulting Party pursuant to Article 5 of the EEI Master Agreement, then all Settlement Amounts and any other payments for all Transactions whether for Power Products and/or Gas Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3.

Option B: No Payment Netting with Payment for Gas Transactions on the 25<sup>th</sup>.

The first sentence of Section 6.2 of the EEI Master Agreement shall be applicable only to Power Products. With respect to Gas Products only, the first sentence of Section 6.2 shall be replaced with the following sentence: “Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement for Gas Products shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 25<sup>th</sup> day of the month following the month of delivery, or the 10<sup>th</sup> day after receipt of the invoice by Buyer or, if such day is not a Business Day, then on the next Business Day.”

Section 6.4 of the EEI Master Agreement shall be applicable to both Power Products and Gas Products; provided, however, for this limited purpose only, monthly payments for Power Products shall be netted only with monthly payments for other Power Products and monthly payments for Gas Products shall be netted only with monthly payments for other Gas Products. For clarity, it is expressly agreed that if an Early Termination Date is declared by the Non-Defaulting Party, then all Settlement Amounts and any other payments for all Transactions whether for Power Products and/or Gas Products shall be netted in calculating the Early Termination Payment pursuant to the provisions of Section 5.3.

2.6 Seller Pays Before and At the Delivery Point. If the Parties have elected on the Paragraph 4 Cover Sheet to make this Paragraph 2.6 applicable, the first two sentences of Section 9.2 of the EEI Master Agreement shall be applicable only to Power Products, and Section 6, “Seller Pays Before and At Delivery Point”, of the NAESB Gas Contract shall be applicable with respect to Gas Products.

### **PARAGRAPH THREE: SUPPLEMENTS TO THE EEI MASTER AGREEMENT FOR TRANSACTIONS RELATING TO GAS PRODUCTS**

The following provisions are applicable with respect to Gas Products only.

3.1 Definitions. The following definitional sections of the NAESB Gas Contract are incorporated by reference into Article One of the EEI Master Agreement with respect to Gas Products only: Sections 2.3, 2.8, 2.9, 2.10, 2.12, 2.14, 2.16 through 2.26 and 2.28 through 2.29; provided, however, that (i) the definition of “Payment Date” in Section

2.23 of the NAESB Gas Contract shall be revised to delete the phrase “, as indicated on the Base Contract,” in the first line thereof and replace such phrase with the following: “, as indicated in this EEI Gas Annex,” and (ii) the definition of “Spot Price” in Section 2.26 of the NAESB Gas Contract shall be revised to delete the phrase “indicated on the Base Contract” in the first line thereof and replace such phrase with the following: “indicated in this EEI Gas Annex”.

3.2 Obligations and Deliveries. The following Sections are added to Article Three of the EEI Master Agreement with respect to Gas Products only:

- 3.4 Force Majeure. Sections 11.1 through 11.6 of the NAESB Gas Contract are incorporated herein in their entirety; provided, however, that in Section 11.1 of the NAESB Gas Contract the phrase “payment(s) due under Section 7, Section 10.4 and Imbalance Charges under Section 4,” shall be deleted and replaced with the following phrase: “payment(s) due under Article 6, Section 5.3, Article 8 and Imbalance Charges under Section 3.5.”.
- 3.5 Transportation, Nominations and Imbalances. Sections 4.1, 4.2 and 4.3 of the NAESB Gas Contract are incorporated herein in their entirety.
- 3.6 Quality and Measurement. Section 5 of the NAESB Gas Contract is incorporated herein in its entirety.
- 3.7 Warranty. Sections 8.2 and 14.8 of the NAESB Gas Contract are incorporated herein in their entirety.

3.3 Remedies for Failure to Deliver/Receive. The following Sections are added to Article Four of the EEI Master Agreement with respect to Firm Gas Products only. If neither Option A nor Option B is specified on the Paragraph 4 Cover Sheet as applicable, Option B of this Paragraph 3.3 shall apply.

Option A: Spot Price Standard.

4.3 Spot Price Standard. The Spot Price Standard portion of Section 3.2 of the NAESB Gas Contract is incorporated herein in its entirety with respect to Firm Gas Products only, with the following language added after the last sentence:

“If the Parties fail to specify an index applicable to the Spot Price Standard either in the Paragraph 4 Gas Annex Cover Sheet or as otherwise agreed by the Parties in connection with a particular Gas Product Transaction, the applicable index shall be the “Daily Midpoint” price set forth in Gas Daily (published by Platts), or any successor publication, in the column “Daily Price Survey” under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day.”

Option B: Cover Standard.

4.3 Cover Standard. The Cover Standard portion of Section 3.2 of the NAESB Gas Contract is incorporated herein in its entirety with respect to Firm Gas Products only.

3.4 Payment and Netting. The following Section is added to Article Six of the EEI Master Agreement with respect to Gas Products only:

6.9 Invoicing for Gas Products. Section 7.1 of the NAESB Gas Contract is incorporated herein in its entirety.

3.5 Miscellaneous. The following Sections are added to Article Ten of the EEI Master Agreement with respect to Gas Products only:

10.12 General. In Section 10.8 of the EEI Master Agreement, the covenant that “Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party” shall not apply in respect of Gas Products.

10.13 UCC. Each Party agrees that notwithstanding any provisions of law relating to adequate assurance of future performance, including without limitation Article 2-609 of the UCC, the Parties shall only be entitled to request adequate assurance as specifically provided in the EEI Master Agreement, including the Collateral Annex thereto. For purposes of the foregoing, UCC means the Uniform Commercial Code as adopted by the jurisdiction governing the Parties and the Transactions. Section references are to the Model Uniform Commercial Code and are intended to correspond to the same substantive provisions contained in the specific codes adopted in the controlling jurisdictions, to the extent that section references differ.

IN WITNESS WHEREOF, the Parties have caused this EEI Gas Annex to be duly executed in one or more counterparts (each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same agreement) effective as of the Effective Date of the EEI Master Agreement. The Parties expressly acknowledge the validity of facsimile counterparts of the executed EEI Gas Annex, if any, which may be transmitted in advance of, or in lieu of, executed original documents.

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

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