

# MISO Module E

# Capacity Transaction

# Confirmation

## Version 1.0 – October 20, 2008

**NOTE: PARTIES SHOULD SEEK APPROPRIATE LEGAL AND ACCOUNTING ADVICE PRIOR TO USING THIS DOCUMENT. THIS DOCUMENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL OR ACCOUNTING ADVICE.**

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## CONFIRMATION

This Confirmation is entered into as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, pursuant to, and subject to the terms and conditions of, that certain Master Power Purchase and Sale Agreement entered into by and between \_\_\_\_\_ (“XXX”) and \_\_\_\_\_ (“XXX”), dated \_\_\_\_\_, \_\_\_\_ (including any amendments, exhibits, schedules and attachments thereto, together with any Confirmations entered into thereunder, being the “*Agreement*”). Unless otherwise defined, capitalized terms used herein will have the meanings ascribed in the Agreement or by the Midwest Independent Transmission System Operator, Inc. (“*MISO*”) under (i) its Open Access Transmission and Energy Market Tariff on file with the FERC, as may be amended from time to time (the “*EMT*”); (ii) that certain filing by the MISO with the FERC pertaining to a new Module E, as conditionally accepted by the FERC, subject to modification, by order dated March 26, 2008 in Docket No. ER08-394 and made effective as of March 27, 2008, with the initial Planning Year currently expected to commence June 1, 2009 and any compliance filings made by the MISO relating thereto that are accepted by the FERC (the “*Revised Module E*”), and the MISO Business Practice Manuals, as the same may be amended (“*MISO Manuals*” or collectively with the EMT and Revised Module E referred to as the “*MISO Documents*”). Additionally, given that the controlling Module E may be modified during the Delivery Period specified in this Confirmation, the period after the Revised Module E is fully implemented, currently expected to be June 1, 2009, will be referred to as the “*Revised Module E Period*.”

Subject to the terms and conditions set forth in the Agreement and this Confirmation, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, during the Delivery Period, the Product, for the applicable Contract Price, as described hereinafter:

**Seller:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Product:** Capacity. “*Capacity*” shall mean the right of the Buyer, in accordance with the requirements of the MISO Documents, to designate the Capacity Source (hereinafter defined), with respect to the Quantity (hereinafter defined), with the MISO as (a) prior to the Revised Module E Period, a Network Resource, and (b) during the Revised Module E Period, a Planning Resource.

Seller acknowledges and accepts Buyer’s designation of the Capacity Source with the MISO (a) prior to the Revised Module E Period, as a Network Resource, and (b) during the Revised Module E Period and in accordance with Section 69.2.1.2(a)(ii) of the Revised Module E, as a Planning Resource, and agrees to take all reasonably necessary action (either directly or through contract rights) required to effectuate such designation by Buyer. Seller also acknowledges and accepts responsibility to comply (either directly or through contract rights) with all applicable requirements of the MISO Documents pertaining to such

designation, including, but not limited to, the requirement for Seller to cause the Capacity Source to be offered into the MISO Day-Ahead Energy Market and the first Reliability Assessment Commitment in an amount necessary to provide the Quantity and in a manner that is consistent with the obligations of (i) prior to the Revised Module E Period, a Network Resource under Section 69.2 of Module E of the EMT, and (ii) during the Revised Module E Period, a Planning Resource under Section 69.2.3 of the Revised Module E.

Seller warrants that (i) the Capacity Source satisfies (x) prior to the Revised Module E Period, the definition of Network Resource, as such term is defined in the EMT, and (y) during the Revised Module E Period, the definition of Planning Resource, as such term is defined in the Revised Module E, and (ii) the Quantity of the Capacity Source has been deemed certified deliverable by the MISO in accordance with Section 69.2.1.4 of the Revised Module E, as evidenced by the results of the most recent deliverability test conducted by the MISO for which the results thereof are available on the MISO website at the following address:

[http://www.midwestmarket.org/publish/Document/1d6630\\_11a6da4545e-7f310a48324a/Deliverability\\_Test\\_Results.xls?action=download&property=Attachment](http://www.midwestmarket.org/publish/Document/1d6630_11a6da4545e-7f310a48324a/Deliverability_Test_Results.xls?action=download&property=Attachment).

Notwithstanding anything to the contrary in this Confirmation or otherwise, (i) in no event will Buyer have any right to dispatch the Capacity Source, nor will Buyer be entitled to any of the Energy or other Products (other than Capacity) associated with the Capacity Source (including, for avoidance of doubt, any revenues associated with the Energy or other Products or Ancillary Services), and (ii) in the case of any outage, so long as Seller causes (either directly or through contract rights) the Capacity Source for the Quantity to comply with the offer requirements of (a) prior to the Revised Module E Period, a Network Resource as provided for in Section 69.2 of Module E of the EMT, and (b) during the Revised Module E Period, a Planning Resource under Section 69.2.3 of the Revised Module E, Seller will not be deemed to be in breach of its obligation to deliver the Capacity hereunder. In this regard, to the extent that during the Delivery Period the Capacity Source, in an amount necessary to provide the Quantity, is offered into the MISO Day-Ahead Energy Market in a manner that complies with the offer requirements of (a) prior to the Revised Module E Period, a Network Resource as provided for in Section 69.2 of Module E of the EMT, and (b) during the Revised Module E Period, a Planning Resource under Section 69.2.3 of the Revised Module E, Seller will be deemed to have “delivered” the Product under this Confirmation.

“*Capacity Source*” means, in respect of that/those certain Generation Resource(s) affiliated with Seller or to which Seller has rights, the

following units and commercial pricing nodes (“**CP Node**”) associated therewith:

**[INSERT TABLE OF NAME/S OF FACILITY/IES AND ASSOCIATED CP NODE/S]**

(the foregoing collectively, the “***Initial Source***”), or any such other Generation Resource(s) and CP Nodes as determined by Seller, in its sole discretion, at any time (“***Alternate Sources***”), provided that: (i) Seller shall notify Buyer of Seller’s substitution of Alternate Sources (a) prior to the Revised Module E Period, as soon as practicable, and (b) during the Revised Module E Period, at least thirty (30) Business Days prior to the Resource Plan Deadline for the applicable Month in which such Alternate Sources shall provide the Quantity or any portion thereof; and (ii) such Alternate Sources shall thereafter be deemed a Capacity Source for all purposes hereunder and shall comply with all the terms and conditions set forth in this Confirmation, including, but not limited to, meeting the same deliverability capabilities as set forth in this Confirmation with respect to the Initial Source.

**Contract Quantity:** “**Quantity**” means (a) [INSERT NUMBER OF MW] MW of Capacity prior to the Revised Module E Period, and (b) [INSERT NUMBER OF MW] MW of Unforced Capacity during the Revised Module E Period.

As of the date on which this Confirmation is entered, it is contemplated that the Quantity will be sourced from the Initial Source as provided below. If Seller elects to substitute Alternate Sources for the Initial Source, in accordance with the requirements of this Confirmation, Seller will have the right but not the obligation to designate any combination of different amounts from the different units and CP Nodes of the Alternate Sources to comprise all or a portion of the Quantity, provided that Seller shall, at all times, remain responsible to Buyer to provide the full Quantity.

**[INSERT TABLE OF APPLICABLE CP NODES AND ASSOCIATED AMOUNTS]**

**Contract Price:** Each month during the Delivery Period, Buyer will pay to Seller, in accordance with the provisions of the Agreement, an amount equal to \$\_\_\_\_\_ per kW-month.

**Delivery Period:** \_\_\_\_\_ \_\_, 20\_\_ through \_\_\_\_\_ \_\_, 20\_\_

**Special Conditions:** (1) Seller covenants, represents and warrants to Buyer that: (i) the Quantity from the Capacity Source (taking into account, for the avoidance of doubt, any Alternate Sources) has not been committed, nor

shall be committed, to any person other than Buyer during the Delivery Period as (a) prior to the Revised Module E Period, a Network Resource, and (b) during the Revised Module E Period, a Planning Resource; and (ii) so long as Buyer designates (either directly or through contract rights) the Capacity Source (taking into account, for the avoidance of doubt, any Alternate Sources), with respect to the Quantity, with the MISO in accordance with the requirements of the MISO Documents, then the Capacity Source shall be acceptable by the MISO as (a) prior to the Revised Module E Period, a Network Resource, and (b) during the Revised Module E Period, a Planning Resource. Except as expressly provided for in this Confirmation, Seller makes no representation or warranty, express or implied, to Buyer regarding the suitability of the Product for any purpose. Seller will indemnify, defend and hold harmless Buyer from and against any and all losses, damages or claims of Buyer arising out of Seller’s misrepresentation with respect to any matter described above within the first sentence of this section.

(2) Buyer covenants, represents and warrants to Seller that, in respect of any communications regarding the provisions of this Confirmation made by Buyer to the MISO, any reliability council or other governmental authority, such communications will be complete and without misrepresentation. Buyer will indemnify, defend and hold harmless Seller from and against any and all losses, damages or claims of Seller arising out of Buyer’s failure to comply with the immediately preceding sentence.

(3) If during the Delivery Period the MISO implements an electronic tracking tool to reflect the ownership of Capacity for Module E purposes, the Parties agree that they will work together in good faith to take such actions as are necessary to cause such electronic tracking tool to reflect the sale of the Product hereunder.

**SELLER**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**BUYER**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_