

EEl's Market Disruption Provisions: Revised Optional Language for Transactions with Index-based Pricing

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¹ This version may be used as an alternative to the original market disruption provisions published by EEl.

Revised Optional Language for Transactions with Index-based Pricing

The language set forth below may be appropriate for inclusion under the "Other Changes" section of the Cover Sheet if Transactions with index-based pricing are envisioned, and the Parties desire to provide for an alternative basis for determining the Contract Price should the relevant index be substantially altered, disrupted or no longer published.

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:
- The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
 - 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.
 - 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.
 - 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.
- 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:

- (a) 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;
- (b) 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;
- (c) the temporary or permanent discontinuance or unavailability of the Price Source;
- (d) the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
- (e) 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.]²

² Parties should bilaterally determine the rounding convention they will apply to Transactions that reference Floating Prices, taking into account their systems requirements and conventions applicable to confirmation platforms that they may use, as appropriate.

PRACTICE NOTES:

MARKET PARTICIPANTS CONSIDERING USE OF THIS OR ANY SIMILAR PROVISION ARE ENCOURAGED TO CONSULT THEIR OWN LEGAL COUNSEL TO ENSURE THAT THEIR COMMERCIAL OBJECTIVES WILL BE ACHIEVED AND THEIR LEGAL RIGHTS AND INTERESTS ADEQUATELY PROTECTED.

IN PARTICULAR, MARKET PARTICIPANTS SHOULD CONSIDER WHETHER THEY MAY HAVE AN INTEREST IN HARMONIZING THE MARKET DISRUPTION PROVISIONS THAT THEY HAVE NEGOTIATED IN OTHER AGREEMENTS THAT ARE RELATED TO THE TRANSACTIONS ENTERED INTO UNDER THE EEI MASTER POWER PURCHASE AND SALE AGREEMENT (E.G., TRANSACTIONS ENTERED INTO UNDER AN ISDA MASTER AGREEMENT).