

Wisconsin Electric Power Company
Coordination Sales Tariff, FERC Electric Tariff Volume No. 2

WISCONSIN ELECTRIC POWER COMPANY

Coordination Sales Tariff

FERC Electric Tariff Volume No. 2

ARTICLE I

AVAILABILITY

Section 1.1 - This Tariff is applicable to coordination sales ("coordination sales" or "transactions") by Wisconsin Electric Power Company ("WEPCo") of capacity and/or energy for resale to any entity including, but not limited to, any investor-owned corporation, municipality, municipal electric company, rural electric cooperative, or association of such entities which engages in the generation, transmission or distribution of electric energy at wholesale or at retail. Each entity that desires to take service under this Tariff shall sign a Service Agreement in the form attached hereto or a similar mutually agreeable form. A purchaser of capacity and/or energy pursuant to this Tariff is referred to herein as a "Customer." WEPCo and a Customer are sometimes referred to in this Tariff as a "Party" or the "Parties."

ARTICLE II

OPERATIONS

Section 2.1 Points of Delivery - The Points of Delivery for coordination sales by WEPCo are the generators providing the capacity and/or energy.

Section 2.2 Ownership and Maintenance - Neither Party shall have any responsibility under this Tariff to install, operate or maintain the other Party's facilities for or on behalf of the other Party or any other entity.

Section 2.3 Synchronous Operation - The Parties intend to operate their electric systems in synchronism with the electric systems of interconnected utilities. If such synchronous operation is interrupted because of reasons beyond the control of either Party, or because of scheduled construction or maintenance, the Parties shall cooperate in reasonable efforts to restore such synchronous operation. Neither Party shall be responsible to the other for any damage or loss of revenue caused by any such interruption.

Section 2.4 Character of Power and Energy - All capacity and/or energy delivered pursuant to this Tariff shall be three-phase, 60-cycle capacity and/or energy.

Section 2.5 Reactive Power - Reactive Power arrangements shall be considered pursuant to Wisconsin Energy Corporation Operating Companies Joint Tariff for Sales of Ancillary Services, or a successor tariff accepted for filing by the Federal Energy Regulatory Commission ("FERC").

ARTICLE III

SERVICES TO BE RENDERED

Section 3.1 Coordination Sales - This Tariff establishes a framework under which WEPCo may sell and a Customer may purchase capacity and/or energy from time to time for their mutual benefit. Additional terms and conditions applicable to such transactions are established by the following attached Service Schedules:

<u>Service Schedule</u>	<u>Type of Service</u>
A	Negotiated Capacity and Energy
B	General Purpose Energy
C	Emergency Energy

Section 3.2 Relationship to Other Agreements - This Tariff does not govern and shall not affect sales or transmission of capacity and/or energy under any other agreement between the Parties.

Section 3.3 Delivery and Transmission Arrangements - Transmission service shall be acquired separately to support the delivery of capacity and/or energy provided hereunder. The Customer shall be responsible for acquiring appropriate transmission service.

Section 3.4 Scheduling - All capacity and/or energy sold hereunder shall be delivered on a scheduled basis in accordance with the applicable Service Schedule. Scheduling requests shall be initiated by the Customer. Except by mutual agreement, schedules shall be set according to WEPCo's standard scheduling procedures; provided that WEPCo shall use reasonable efforts to accommodate a Customer's requests for nonconforming schedules or schedule changes. All schedules shall be in whole megawatt quantities unless modified by mutual agreement. Each Party shall provide to the other Party the names or positions of persons authorized to coordinate transaction schedules on its behalf.

Section 3.5 Recording – Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Tariff, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to a particular Transaction in the event a confirmation is not fully executed by both Parties. Upon full execution of a confirmation, such confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Tariff; *providing however*, no

confirmation is required, nor will one be provided, for transactions of less than 24 hours in duration and as to such transactions the Recording shall control.

ARTICLE IV

CREDIT REQUIREMENTS

Section 4.1 Creditworthiness - WEPCo, in order to satisfy itself of the ability of Customer to meet its obligations related to service hereunder, may in accordance with standard commercial practices conduct reasonable credit reviews. WEPCo will require Customer to provide the information and meet the requirements determined by WEPCo. Customer's failure to provide and maintain adequate credit support shall be grounds for WEPCo to deny a request for service or to terminate service. WEPCo may require Customer to provide and maintain in effect during the term related to service hereunder, or any transaction hereunder, an unconditional and irrevocable letter of credit, a parental guaranty, or an alternative form of security acceptable to WEPCo and consistent with commercial practices ("Performance Assurance"). WEPCo reserves the right, on a non-discriminatory basis, to require Customer or Customer's guarantor to submit to WEPCo updated financial information to permit WEPCo to evaluate the creditworthiness of the Customer, or Customer's guarantor on an on-going basis, and if necessary, to require future Performance Assurance. Upon receipt of such notice Customer, or Customer's guarantor, shall have three (3) business days to remedy the situation by providing such Performance Assurance to WEPCo. In the event that Customer or Customer's guarantor fails to provide such Performance Assurance acceptable to WEPCo within three (3) business days of receipt of notice than an Event of Default will be deemed to have occurred.

ARTICLE V

DEFAULT AND REMEDIES

Section 5.1 Events of Default - An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- a. such Party fails to make, when due, any payment required pursuant to this Tariff or a coordination sale hereunder, if such failure is not remedied within three (3) business days after written notice;
- b. any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- c. such Party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within three (3) business days after written notice;

- d. such Party becomes bankrupt, including if such Party (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due;
- e. such Party fails to comply or cause compliance with the Performance Assurance requirements pursuant to Section 4 of the Tariff, or any person furnishing any Performance Assurance on behalf of a Party pursuant to Section 4 of the Tariff fails to comply with the terms of such Performance Assurance;
- f. such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Tariff and all coordination sales hereunder to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- g. With respect to such Party's Guarantor, if any: (i) any representation or warranty made by a Guarantor in connection with this Tariff or any coordination sale hereunder is false or misleading in any material respect when made or when deemed made or repeated; (ii) a Guarantor fails to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) business days after written notice; (iii) a Guarantor becomes Bankrupt; (iv) a Guarantor's guaranty fails to be in full force and effect for purposes of this Tariff or a coordination sale hereunder (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each transaction to which such guaranty shall relate without the written consent of the other Party; or (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

Section 5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts - If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such

Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

Section 5.3 Net Out of Settlement Amounts - The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

Section 5.4 Notice of Payment of Termination Payment - As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

Section 5.5 Disputes With Respect to Termination Payment - If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

Section 5.6 Closeout Setoffs - After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its affiliates to the Non-Defaulting Party or any of its affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its affiliates and the Non-Defaulting Party or any of its affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Section 5.7 Suspension of Performance - Notwithstanding any other provision of this Tariff, if (a) an Event of Default or (b) an event which, with notice or passage of time, would constitute an Event of Default shall have occurred and be continuing, the Non-

Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all transactions, and (ii) to the extent an Event of Default shall have occurred and be continuing, to exercise any remedy available at law or in equity.

Section 5.8 Force Majeure - "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more sales agreements or transactions, which event or circumstance was not anticipated as of the date the transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, 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 Customer's markets; (ii) Customer's inability economically to use or resell the product purchased hereunder; or (iii) WEPCo'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 the 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 "uncontrollable force" or a similar term as defined under the transmission provider's tariff.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the agreement(s) or transactions and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of an agreement or transaction specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such agreement(s) or transactions (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

Section 5.9 Limitation of Remedies, Liability and Damages - Except as set forth herein, coordination sales entered into under this Tariff provide no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. Parties entering into coordination sales to which this Tariff is applicable confirm that the express remedies and measures of damages provided in this Tariff satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein or in an agreement or transaction hereunder, the liability of either party shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived. Neither party shall be liable for consequential, incidental, punitive, exemplary, special or indirect damages, lost profits or other business interruption damages, by statute, in tort or contract under any indemnity provision, or otherwise. It is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without

regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint, or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are difficult or impossible to determine or that otherwise obtaining an adequate remedy is inconvenient and that the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Section 5.10 Designated Representatives - Any dispute between the Parties involving service under this Tariff or a coordination sale hereunder shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days, or such other period as the Parties may agree upon, such dispute shall be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

Section 5.10.1 Arbitration –

- a. Any arbitration initiated under this Tariff shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided, however, that the Parties shall be entitled to all rights of discovery pursuant to the Federal Rules of Civil Procedure. Any arbitration hearing conducted under this Tariff shall be conducted in the State of Wisconsin.
- b. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Tariff or coordination sales hereunder and shall have no power to modify or change any of the above in any manner. The final decision of the arbitrator(s) must also be filed with FERC for acceptance and/or approval if it affects jurisdictional rates, terms, and conditions of service or facilities. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. Nothing in section 5.10 shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
- c. Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

- I. the cost of the arbitrator chosen by the Party to sit on the three member panel and one-half of the cost of the third arbitrator chosen; or
- II. one-half the cost of the single arbitrator jointly chosen by the Parties.

ARTICLE VI

SULFUR DIOXIDE EMISSION ALLOWANCES

Section 6.1 "Out-Of-Pocket Cost" to Recoup Sulfur Dioxide Emission Allowances

The federal Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. establishes certain annual maximum sulfur dioxide levels, known as emission allowances ("EAs"), for flue gases emitted by electric generating units, including units owned by WEPCo and other electric utilities who may supply electric energy for transactions under this Tariff. The generator of the electric energy supplied and delivered under this Tariff is required under the Clean Air Act to have adequate EAs (as defined by Section 402(3) of the Act, in conjunction with Section 403(F) of the Act) in order to generate such electric energy.

Section 6.2 Compensation - WEPCo will charge the Customer for EAs at a rate up to 100% of the cost to replace such EAs as they are expended to produce energy associated with transactions under this Tariff. Each hour's energy transactions shall be aggregated for the billing month, and EAs shall be rounded to the closest whole ton.

Section 6.3 Customer Choice Of Reimbursement - The Customer shall have the right to choose, for each billing month, whether it shall replace such EAs in kind or in cash.

Section 6.4 Index Used For Market Price Determination - WEPCo shall use the index maintained by the Cantor Fitzgerald Environmental Brokerage Service to determine monthly market prices for EAs.

Section 6.5 Calculation Methodology - Based on the contractual requirements the methodology for determining the number of allowances is based upon either predictive (forward looking) estimates or after-the-fact determinations of what units will be, or were, used to generate power for the transaction. When power for a sale is generated at an affected unit, the amount of generation, as expressed in MWh, is multiplied by the unit's average emissions rate, as expressed in tons SO₂ per MWh, to determine the number of EA's used to support the power transaction. When power for a sale is generated at more than one affected unit, the calculation is repeated for each unit and the units summed to provide a total. For those utilities choosing to pay cash the number of EA's is multiplied by the expected marginal emissions cost for the unit (or units) to determine the cash equivalent. The emissions rate for a unit is determined on a monthly basis and is taken from the EPA-certified continuous emissions monitor located at each stack or unit. The same emissions rate is used both for displacing and for pricing coordination service.

The expected marginal emissions cost for a unit is determined by the U/C/S Manager computer program. Use of the U/C/S Manager is required since during Phase I of the Clean Air Act Amendments (CAAA) of 1990, for utilities with reduced utilization, the

dispatch cost adder is not the full incremental cost of an allowance because utilities with reduced utilization will also be required to surrender allowances at a utility specific surrender rate. As fully explained in Attachment 1 to the filing, for a utility subject to the reduced utilization provisions of the CAAA, the incremental emissions cost for a unit is no longer the emission rate multiplied by the EA market price, but is the emissions rate less the surrender rate multiplied by the EA market price.

Section 6.6 Documentation - Upon request, WEPCo shall provide documentation for the determination of the number of EAs attributable to specific energy transactions under this Tariff.

Section 6.7 Settlement - The Customer may withhold cash payment or surrender of EAs until such time as WEPCo must surrender allowances to the U.S. Environmental Protection Agency for the same calendar year.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Rate Schedule Changes - WEPCo shall have the unilateral right at any time to make application to the FERC, pursuant to Section 205 of the Federal Power Act and the FERC's applicable rules and regulations, for changes in any of the rates, terms or conditions of this Tariff. Any such changes in this Tariff shall not affect transactions agreed to by the Parties prior to the date such changes become effective.

Section 7.2 Billing - The Customer shall compensate WEPCo for all purchases in accordance with the terms of the applicable Service Schedule in effect at the time of delivery. All bills for coordination sales provided under this Tariff shall be issued on a calendar month basis, by the 10th working day following the calendar month to which they apply. All bills shall be due and payable within 15 days after receipt; provided that, in no event shall any payment be due before the 25th day of the billing month. If the due date of a payment is a Saturday, Sunday or legal holiday, the bill shall be paid on or before the next following business day. Interest on unpaid amounts shall accrue daily at the maximum rate of interest permitted by law from the due date of such unpaid amount until payment is received.

Section 7.3 Monthly Netting of Payments – “Netting” means the process of offsetting, as of a particular day, all amounts owed by each Party to the other Party, so that only the excess of the Parties’ mutual and offsetting debts and obligations remain owing from one Party to the other. Except where an agreement entered into between WEPCo and a customer expressly states it shall not be subject to Netting of Payments, the Parties shall discharge any mutual debts and payment obligations that are due and owing to each other under the Agreement by means of Netting, in accordance with the

provisions of this tariff. The Party that is owed a debt as a result of Netting shall issue a bill to the other Party for payment in accordance with the provisions of Section 7.2.

Section 7.4 Indemnity - Each Party agrees to defend, indemnify and hold harmless the other Party against all claims, liability, loss, damage or expense of any other entity caused by, or resulting from, negligent acts or omissions of the indemnifying Party, its employees or agents and from and against any claims arising from or out of any sale, transaction, event, circumstance, act or incident which first occurred during or as a result of the agreement or transaction entered into between the parties. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges (as defined in Section 7.12) for which the indemnifying Party is responsible.

Section 7.5 Records and Audits - The Parties to any sales or transactions based upon this Tariff shall maintain, for a period of at least three years, records of all transactions hereunder. Each Party, has the right, at its own expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation under this Tariff. If any such examination reveals any inaccuracy in any statement, the necessary adjustment(s) in such statement and the payments thereof will be made promptly and shall bear interest calculated at the interest rate stated in Section 7.2 from the date that the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

Section 7.6 Successors and Assigns - This Tariff and any agreement or transactions hereunder shall be binding upon the Parties thereto and upon their successors and assigns, on and after the effective date of the agreement or transaction. Neither Party shall, without the prior written consent of the other Party, assign, pledge or transfer all of, any part of, or any right or obligation under any agreement or transaction entered into under this Tariff, whether voluntarily or by operation of law; provided, however, that a Party may, without the consent of the other Party, assign its rights and obligations under such an agreement to any person or entity (1) into which a Party is merged or consolidated, or (2) to which a Party sells, transfers, or assigns all or substantially all of its assets, so long as: the survivor in any such merger or consolidation, or the purchaser, transferee or assignee of such assets provides to the other Party a valid and binding written agreement expressly assuming and agreeing to be bound by all obligations of the assigning Party under the agreement.

In the event of any permitted sale, transfer, or assignment hereunder, the transferor or assignor shall to the extent of the transferred or assigned obligations, and only to such extent, be relieved of obligations accruing from and after the effective date of such transfer or assignment; provided, however, that under no circumstances shall any sale, transfer, or assignment relieve the transferor or assignor of any liability for any breach of a sales agreement hereunder to which the transferor or assignor was a party or for any violation of this Tariff occurring before the effective date of such transfer or assignment.

Consents to assignments, pledge, or transfer requested pursuant to this Section shall not be unreasonably delayed or denied.

Section 7.7 Rights Restriction - This Tariff is not intended to, and shall not create rights of, any character whatsoever in favor of any person, corporation, association or entity other than the Parties, and the obligations assumed herein are solely for the use and benefit of such Parties.

Section 7.8 Waivers - Any waiver at any time by either Party of its rights with respect to failure to comply with the terms of this Tariff or with respect to any other matter arising in connection with this Tariff shall not be deemed a waiver with respect to any subsequent failure to comply or other matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right under this Tariff shall not be deemed a waiver of such right.

Section 7.9 Notices - All notices provided to WEPCo under this Tariff shall be addressed as follows:

Overnight Delivery

Director – Federal Regulatory Affairs
& Policy
Wisconsin Electric Power Company
Rm A459
P.O. Box 2046
Milwaukee, Wisconsin 53201-2046

Director – Federal Regulatory Affairs
& Policy
Wisconsin Electric Power Company
Rm A459
333 West Everett Street
Milwaukee, Wisconsin 53203

WEPCo may change the position and address specified above by written notice to the Customer.

Section 7.10 Regulation - This Tariff is subject to acceptance for filing by the FERC or other regulatory agencies having jurisdiction.

Section 7.11 Title and Risk of Loss - Title to and risk of loss related to the Product shall transfer from WEPCo to Customer at the point of delivery.

Section 7.12 Governmental Charges - WEPCo shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a transaction arising prior to the point of delivery. Customer shall pay or cause to be paid all Governmental Charges on or with respect to the product or a transaction at and from the point of delivery (other than ad valorem, franchise or income taxes which are related to the sale of the product and are, therefore, the responsibility of the WEPCo). In the event WEPCo is required by law or regulation to remit or pay Governmental Charges, which are Customer’s responsibility hereunder, Customer shall promptly reimburse WEPCo for such Governmental Charges. If Customer is required by law or regulation to remit or pay Governmental Charges which are WEPCo’s responsibility hereunder, Customer may deduct the amount of any such Governmental Charges from the sums due to WEPCo under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

Section 7.13 Forward Contract - The Parties acknowledge and agree that all coordination sales hereunder constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

Section 7.14 Confidentiality - Neither Party to a transaction or sale shall disclose the terms or conditions of a transaction or the results of any audit performed under this Tariff to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

Section 7.15 Choice of Law - This Tariff and all service agreements and transactions hereunder shall be governed by, interpreted and construed in accordance with the laws of the State of Wisconsin.

Section 7.16 Choice of Venue - Any action or other judicial proceeding for the enforcement of this Tariff or any coordination sale hereunder or any of its provisions shall be instituted only in the courts of the State of Wisconsin.

Section 7.17 Modification by Agreement - The terms and conditions of this Tariff may be modified by agreement between the Parties when expressly set forth in the service agreement filed with and accepted by the FERC.

Section 7.18 General - This Tariff (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and the sales agreement(s) or transaction(s) shall constitute the entire agreement between Parties relating to this subject matter. Except to the extent herein provided for, no amendment or modification to any transactions based upon this Tariff shall be enforceable unless reduced to writing and executed by both Parties. If any sales agreement or transaction provision based upon this Tariff is declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event"), such Regulatory Event will not otherwise affect the remaining lawful obligations that arise under this Tariff. Furthermore, if a Regulatory Event occurs, the Parties shall use their best efforts to reform the sales agreement or transaction so as to give effect to the original intention of the Parties. The headings contained in this Tariff are used solely for convenience and are not intended to be used in any manner in the interpretation of this Tariff. The term "including" when used in this Tariff shall be by way of example only and shall not be considered in any way to be in limitation.

Section 7.19 Effective Date - This Tariff shall become effective on the date as assigned by the FERC.

Section 7.20 Termination - Service agreements under this Tariff shall continue in full force and effect, until terminated by either Party upon 30-day prior written notice. Following termination of any service agreement, the provisions of this Tariff related to billing, indemnification and audits shall survive for twelve (12) months or until the Parties' obligations thereunder have been fully discharged, whichever period is longer.

Wisconsin Electric Power Company
Coordination Sales Tariff, FERC Electric Tariff Volume No. 2

**Wisconsin Electric Power Company
Coordination Sales Tariff
FERC Electric Tariff Volume No. 2**

Electric Service Agreement

ELECTRIC SERVICE AGREEMENT

This Electric Service Agreement, dated as of (date), is entered into by and between Wisconsin Electric Power Company ("WEPCo") and _____ ("Customer").

WEPCo will make to Customer the coordination sales identified in WEPCo's FERC Coordination Sales Tariff (hereinafter referred to as the Tariff) subject to WEPCo's reaching mutual agreement with Customer for each transaction under the Tariff. WEPCo shall provide capacity and/or energy at rates and charges determined in accordance with the Tariff and subject to the terms and conditions set forth in the Tariff.

Any notice or request made to or by WEPCo or Customer regarding this Service Agreement shall be made in writing and shall be telecommunicated or delivered either in person or by prepaid mail to the representative of the other Party as indicated below. Such representative and address for notices or requests may be changed from time to time by notice by one Party to the other.

WEPCo:

Director - Federal Regulatory Affairs & Policy
Wisconsin Electric Power Company, Room A459
333 W. Everett Street
Milwaukee, Wisconsin 53203

Customer:

IN WITNESS WHEREOF, WEPCo and Customer have caused this Service Agreement to be executed by their respective authorized officials as of the date first above written.

WEPCo:

By: _____
Title: Director-Federal Regulatory Affairs & Policy

Customer:

By: _____
Title: _____

**Wisconsin Electric Power Company
Coordination Sales Tariff
FERC Electric Tariff Volume No. 2**

**Service Schedule A
Negotiated Capacity and Energy**

SERVICE SCHEDULE A

NEGOTIATED CAPACITY AND ENERGY

SECTION 1 - DURATION

A.1.1 This Service Schedule, a part of the Coordination Sales Tariff, shall continue in effect throughout the duration of the Coordination Sales Tariff, unless and until changed pursuant to the Tariff.

SECTION 2 - SERVICES TO BE RENDERED

A.2.1 A Customer may purchase Negotiated Capacity and/or Energy from WEPCo for the purpose of obtaining a supply of power during the period covered by a commitment. It is intended to provide both the Customer and WEPCo with a wide range of flexibility in structuring transactions, which are mutually beneficial, including negotiated degrees of firmness (including negotiable reserve responsibility), variable capacity and energy charges and variable time durations.

A.2.2 WEPCo and the Customer may also negotiate an option ("Option") to purchase capacity and associated energy at a specified price within a specified time period, such payments to be made when and as agreed. WEPCo and the Customer may also negotiate a Diversity Exchange, that is, the exchange of capacity and energy in one period for capacity and energy in another period.

SECTION 3 - CONDITIONS OF SERVICE

A.3.1 A Customer may request the number of megawatts and the period for which it desires to reserve Negotiated Capacity. WEPCo shall, based upon its sole judgment, promptly indicate the extent of its ability and willingness to make the requested reservation and the capacity charge, which will be applicable. Any request, acknowledgment of such request, offer and/or acceptance of any offer given orally shall be confirmed in writing within five (5) business days following the oral request, acknowledgment, offer or acceptance, unless mutually agreed otherwise by the parties.

A.3.2 The Customer may secure an Option on capacity that WEPCo may have and is willing to place under an Option, or may arrange a Diversity Exchange if WEPCo determines it both can use the energy offered and is willing to make available the energy to be returned. Any request, acknowledgment of such request, offer and/or acceptance of any offer given orally shall be confirmed in writing within five (5) business days following the oral request, acknowledgment, offer or acceptance, unless mutually agreed otherwise by the parties.

A.3.3 The degree of firmness of the Negotiated Capacity, which may range from firmness equivalent to WEPCo's native requirements services to non-firm service, shall be mutually agreed upon by both Parties at the time the power is reserved or placed

under Option. Capacity classified as non-firm shall, at a minimum, be treated by WEPCo as having a higher degree of reliability than sales to other systems which do not involve a sale of capacity (e.g., hourly economy energy, hourly general purpose, etc.)

A.3.4 During the period that firm Negotiated Capacity has been reserved or power and energy are to be delivered upon exercise of the Option, or exchange power and energy are to be delivered to Customer as provided above, it shall be the responsibility of a Customer to schedule, in advance, the deliveries of energy associated therewith and of WEPCo to deliver such energy in amounts up to the number of megawatts reserved.

A.3.5 The Negotiated Capacity billing demand for any period shall be equal to the number of megawatts reserved for such period as Negotiated Capacity.

SECTION 4 - COMPENSATION

A.4.1 Compensation for the supply of Negotiated Capacity and Energy shall be at the following rates:

A.4.11 Capacity charge:

- a. Generation Capacity generated by WEPCo:
 1. Up to \$ 88,219/MW-year for periods of one (1) or more years, or
 2. Up to \$7,356/MW-month for periods of three (3) through eleven (11) months, or
 3. Up to \$1,697/MW-week for periods of one (1) through twelve (12) weeks, or
 4. Up to \$340/Mw-day for periods of less than one (1) week. (This element of charge for any one week shall total no more than the product of \$1,697 times the highest average number of megawatts delivered in any hour during the week.)
- b. Generation Capacity purchased from a third party when WEPCo is the transmitting Party: the demand charge, if any, paid by WEPCo to the third party.

A.4.12 Energy Charge

- a. The energy charge for all megawatthours generated and delivered by WEPCo under this agreement shall be WEPCo's Out-of-Pocket Cost ("OPC") plus an adder of up

to 10% of OPC. For purposes of this Service Schedule, OPC includes all operating and maintenance costs, taxes on gross receipts, and other expenses incurred by WEPCo which would not have been incurred if the energy had not been supplied or scheduled. OPC shall include payments to Wisconsin retail customers who have enrolled in load management programs.

- b. Energy which is purchased from a third party by WEPCo and resold to a Customer shall be priced at the total amount paid by WEPCo to the third party (including any related transmission costs), plus the cost of taxes on gross receipts incurred.
- c. Upon request by a Customer, an estimate of energy charges will be given prior to scheduling of energy for any given day, and the Customer will be notified of any significant changes to that price. Further, by mutual agreement and for a specified time duration, energy prices may be agreed upon in advance, based upon methods a. and b. above.

A.4.13 Customer Supplied Fuel

At Customer's request, but subject to WEPCo's agreement, Customer may supply fuel to WEPCo in exchange for capacity and associated energy. WEPCo and the Customer will agree on the value of the delivered fuel and a negotiated price for the capacity and associated energy. In no event shall the total compensation to WEPCo (which shall include the agreed value of the fuel) exceed the cumulative rate caps for capacity and energy set out in Sections A.4.11 and A.4.12.

A.4.14 Options

Compensation for an Option on WEPCo capacity shall, in no event, exceed the capacity charge for Negotiated Capacity set out above in Section 4.11. Upon exercise of the Option, the total of any additional charges for capacity and energy plus the option payment shall not exceed the cumulative rate caps for capacity and energy set out in Section A.4.11 and Section A.4.12.

A.4.15 Rate of Exchange

At the time a Diversity Exchange is agreed to, WEPCo and the Customer shall agree on the ratio of exchange between off-peak and on-peak or other supply periods. In no event shall the value to WEPCo of energy received (as measured

by WEPCo's avoided OPC at the time of receipt) exceed the cumulative rate caps for capacity and energy set out in Sections A.4.11 and A.4.12.

A.4.16 Fixed Rate

WEPCo and the Customer may agree to fixed rates per megawatt-hour for the term of an individual transaction provided, however, that in no case shall the compensation, over the term of the transaction, exceed the cumulative rate caps for capacity and energy set out in sections A.4.11 and A.4.12.

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**Service Schedule B
General Purpose Energy**

SERVICE SCHEDULE B

GENERAL PURPOSE ENERGY

SECTION 1 - DURATION AND EFFECTIVE DATE

B.1.1 This Service Schedule, a part of the Coordination Sales Tariff, shall continue in effect throughout the duration of the Coordination Sales Tariff, unless and until changed pursuant to the Tariff.

SECTION 2 - SERVICES TO BE RENDERED

B.2.1 General Purpose Energy is made available from time to time by WEPCo from temporarily surplus generating capacity on its system or from energy purchased from another utility and with respect to which no other Service Schedule is applicable.

B.2.2 A Customer, by giving WEPCo advance notice, may request, for periods of one or more days or on an hour-to-hour basis, the provision of General Purpose Energy by specifying to WEPCo the amount of energy it desires to purchase and the period for which it desires the energy. WEPCo shall, based on its sole judgment, promptly indicate the extent to which it will agree to fulfill the request, the extent to which the request would be fulfilled by reselling energy purchased from another utility and the terms on which it is willing to supply the energy.

B.2.3 In the event of an emergency or change in operating condition on WEPCo's system, a Customer shall use its best efforts to release WEPCo from any obligation to supply Daily General Purpose Energy as quickly as possible, but in any event, WEPCo shall be under no obligation to continue the sale for more than three hours after it notifies a Customer of its intention to discontinue such supply by reason of such emergency or change in operating condition. WEPCo may reduce or discontinue the supply of Hourly General Purpose Energy at any time. To the extent practicable, however, WEPCo shall advise a Customer of its intention to do so.

SECTION 3 - COMPENSATION

B.3.1 The rate for General Purpose Energy sold by WEPCo shall be:

B.3.11 For energy from WEPCo's generating facilities: An agreed upon rate up to \$20.44 per megawatt-hour (this element of the charge not to exceed either \$327 times the highest number of megawatts delivered in any one hour during a day or \$1,635 times the highest number of megawatts delivered in any one hour in a consecutive seven-day period), plus up to 110% of WEPCo's Out-of-Pocket Cost ("OPC"). For purposes of this Service Schedule, OPC includes all operating and maintenance costs, taxes on gross receipts, and other expenses incurred by WEPCo which would not

have been incurred if the energy had not been supplied or scheduled. OPC shall include payments to Wisconsin retail customers who have enrolled in load management programs.

B.3.12 For energy purchased by WEPCo from another utility for economic reasons to meet system needs but which in subsequent system resource accounting calculations is determined to have been used to supply a Daily General Purpose Energy transaction and for which WEPCo stands by to supply from its own resources:

- a. The charges paid therefor by WEPCo, plus
- b. The cost of taxes on gross receipts which would not otherwise have been incurred, plus
- c. Up to \$20.44 per megawatt-hour (this element of the charge not to exceed either \$327 times the highest average number of megawatts delivered in any one hour during a day or \$1,635 times the highest number of megawatts delivered in any one hour in a consecutive seven-day period).

B.3.13 For energy purchased by WEPCo from another utility in order to supply an Hourly or Daily General Purpose Energy transaction or purchased by WEPCo from another utility for economic reasons to meet system needs but which in subsequent system resource accounting calculations is determined to have been used to supply an Hourly General Purpose Energy transaction and for which WEPCo does not stand by to supply from its own resources:

- a. The charges paid therefor by WEPCo, plus
- b. The cost of taxes on gross receipts that would not otherwise have been incurred.

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**Service Schedule C
Emergency Energy**

SERVICE SCHEDULE C

EMERGENCY ENERGY

SECTION 1 - DURATION

C.1.1 This Service Schedule, a part of the Coordination Sales Tariff CST, shall continue in effect throughout the duration of the Coordination Sales Tariff CST, unless and until changed pursuant to the Tariff.

SECTION 2 - SERVICES TO BE RENDERED

C.2.1 Emergency Energy is non-firm energy made available from time to time by WEPCo from (1) generating capacity on its system or (2) from energy purchased from another utility or (3) from unserved energy made available through a voluntary load reduction program approved by the Public Service Commission of Wisconsin when an emergency exists on the system of the Customer. An emergency is a breakdown or other contingency involving either sources of power or transmission facilities, or both, which impairs or jeopardizes the Customer's ability to meet its system requirements.

C.2.2 The Customer may request the provision of Emergency Energy by specifying to WEPCo the amount of energy it desires to purchase and the period for which it desires the energy. Such energy shall be requested as soon as possible after the emergency occurs. WEPCo shall furnish Emergency Energy in such amounts and for such periods as, in its sole judgment, it can supply.

C.2.3 WEPCo may curtail, restrict or discontinue delivery of Emergency Energy whenever, in its sole judgment, such curtailment, restriction or discontinuance is necessary in the conduct of its other business or affairs, or its operations pertaining thereto. Notice of such curtailment, restriction or discontinuance shall be made by expeditious means to the Customer as far in advance as practicable, and the Customer shall promptly comply with the decision of WEPCo.

C.2.4 Ancillary services, to the extent they are required for transactions under this Service Schedule, will be provided pursuant to another tariff.

SECTION 3 - COMPENSATION

C.3.1 The rates for Emergency Energy shall be:

C.3.11 For energy generated by WEPCo, the greater of:

- a. \$99.02 per megawatt-hour, or
- b. 110% of WEPCo's Out-of-Pocket Cost ("OPC"). For purposes of this Service Schedule, OPC includes all operating and maintenance costs, taxes on gross receipts, other expenses incurred by WEPCo which would not have been incurred if the energy had not been supplied or

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scheduled. OPC shall include payments to Wisconsin retail customers who have enrolled in load management programs.

C.3.12 For energy purchased by WEPCo from another utility, the greater of:

- a. \$99.02 per megawatt-hour, or
- b. The sum of:
 - (i) The charges paid therefor by WEPCo, plus
 - (ii) The cost of taxes and other expenses incurred by WEPCo which would not have been incurred if the energy had not been supplied or scheduled.