**Rate Schedule No. [\_\_]**

**DYNAMIC TRANSFER AGREEMENT**

**AMONG**

**[NATIVE BA]**

**[GENERATOR OWNER]**

**AND**

**[ATTAINING BA]**

**Dynamic Transfer Agreement**

This Dynamic Transfer Agreement (the “Agreement”) is entered into as of [insert date], among [Native BA] (“Native BA”), [Generator Owner] (“Generator Owner”), and [Attaining BA] (“Attaining BA”) (hereinafter collectively the “Parties”).

**Recitals**

**Whereas,** Generator Owner is the majority owner and has contractual authority for [insert amount] MW of [describe generation facility] located in [insert county name] County, [insert state], which is within the Native BA Balancing Authority Area (“Native BA BAA”);

**Whereas,** the Native BA Balancing Authority is the Balancing Authority responsible for balance and interconnection frequency support within the Native BA BAA;

**Whereas**, [insert amount] MW of [generation facility] has cleared the Attaining BA Capacity Transition Incremental Auction in Attaining BA for the [2016/2017] Delivery Year as a Capacity Performance Resource for Attaining BA;

**Whereas**, Generator Owner has received a Capacity Import Limit (“CIL”) exemption from Attaining BA beginning in the [2016/2017] Delivery Year for the [insert amount] MW output from [generation facility] that is the subject of the Pseudo-Tie;

**Whereas,** Generator Owner is required to Pseudo-Tie [insert amount] MW of [generation facility], to the Attaining BA Balancing Authority Area (“Attaining BA BAA”) to satisfy the Attaining BA Open Access Transmission Tariff (“OATT”) requirements for Capacity Performance Resources;

**Whereas,** the Attaining BA Balancing Authority is the Balancing Authority responsible for balance and interconnection frequency support within the Attaining BA BAA;

**Whereas,** Attaining BA and Native BA wish to coordinate operation of any Pseudo-Ties to satisfy North American Electric Reliability Corporation reliability standards, North America Energy Standards Board criteria, and Good Utility Practice;

**Whereas,** Attaining BA and Native BA wish to establish the terms and conditions for the operation of the Pseudo-Ties; and

**Whereas**, Generator Owner will ensure that [generation facility], will comply with the terms and conditions of this Agreement, the Native BA OATT, and the Attaining BA OATT regarding the Pseudo-Tie that are applicable to it.

**Now Therefore** the Parties agree as follows:

1. **Definitions and Acronyms**

Unless the context otherwise specifies or requires, each capitalized term used in this Agreement shall have the meaning assigned herein, or attachments hereto (such definitions to be equally applicable to both the singular and the plural forms of the terms defined). All references to the *Glossary of Terms Used in NERC Reliability Standards* shall refer to the version of the *Glossary of Terms Used in NERC Reliability Standards* that is in effect as of the date of this Agreement, or if this Agreement is amended, the version in effect as of the date of the amendment of this Agreement.

* 1. “Agreement” shall mean this document, as amended from time to time, including all attachments, appendices, and schedules, if any.
  2. “Balancing Authority” shall have the meaning set forth in the *Glossary of Terms Used in NERC Reliability Standards*.
  3. “Balancing Authority Area” shall have the meaning set for in the *Glossary of Terms Used in NERC Reliability Standards*.
  4. “Breach” shall mean the failure of a Party to perform or observe any material term or condition of the Agreement.
  5. “Capacity Performance Resource” shall have the meaning set forth in the Attaining BA OATT.
  6. “Congestion Management Process” refers to the congestion management process in the MISO-Attaining BA Joint Operating Agreement.
  7. “Delivery Year” shall have the meaning set forth in the Attaining BA OATT.
  8. “FERC” shall mean the Federal Energy Regulatory Commission.
  9. “Good Utility Practice” shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).
  10. “NAESB” shall mean the North America Energy Standards Board.
  11. “NERC” shall mean the North American Electric Reliability Corporation.
  12. “Party” or “Parties” refers to any party to this Agreement or all parties, as applicable.
  13. “Pseudo-Tie” shall have the meaning set forth in the *Glossary of Terms Used in NERC Reliability Standards*.
  14. “Regional Entity” shall mean an entity that NERC has authorized to enforce compliance with reliability standards.
  15. “Third Party” means any entity other than a Party to this Agreement.

1. **General Requirements**
   1. The Pseudo-Tie under the terms of this Agreement shall be provided in accordance with each of the following conditions:

2.1.1 Native BA shall not provide generation resources to satisfy the Pseudo-Tie.

2.1.2 The first [insert amount] MW of Generator Owner entitled ownership capacity from [generation facility] (referred to as Designated Capacity by Native BA and Generator Owner) would be dedicated to the Pseudo-Tie.

2.1.3 Long-term firm point-to-point transmission service has been procured to sufficiently deliver [insert amount] MW of capacity and energy from [generation facility], to the Attaining BA BAA and must be maintained for the term of this Agreement. Except with respect to permitted redirects per Section 2.1.5 of this Agreement, Generator Owner agrees to maintain the long-term firm point-to-point transmission reservation for the duration for the relevant Delivery Year(s). A failure to maintain such reservation would constitute a violation of the Attaining BA rules and regulations pertaining to Capacity Performance Resources and a Breach of this Agreement.

2.1.4 If the [insert amount] MW of capacity from [generation facility] is not called upon as a Capacity Performance Resource on any given day in Attaining BA and Generator Owner wishes to utilize the [insert amount] MW to serve its load in the Native BA BAA [or neighboring BAAs], then Generator Owner must block schedule and tag the amount of energy and capacity it wishes to use for this purpose (up to the [insert amount] MW limit) to move such energy and capacity from Attaining BA to the Native BA BAA or neighboring BAAs, as the case may be.

2.1.5 If [generation facility] is in a declared outage, then Generator Owner may redirect the firm point-to-point transmission service associated with such unit for the duration of the outage. If Generator Owner redirects the firm point-to-point transmission service associated with [generation facility], then such unit cannot be identified as a Point of Receipt (as defined in the Native BA OATT) or source for the redirected service.

2.1.6 The Pseudo-Tie is registered in the NAESB registry.

2.1.7 Generator Owner fully complies with the terms and conditions and its obligations under this Agreement.

* 1. Native BA shall implement this Pseudo-Tie such that it is consistent with the provisions of the Native BA OATT or any successor OATT.
  2. Attaining BA shall implement this Pseudo-Tie such that it is consistent with the provisions of the Attaining BA OATT or any successor OATT.
  3. The [insert name of reliability coordinator] [VACAR South Reliability Coordinator] (RC) will be the native RC responsible for the transmission related congestion (SOLs and IROLs as defined in the *Glossary of Terms Used in NERC Reliability Standards*) on the transmission system where the Pseudo-Tie is connected. All of the procedures associated with this dynamic transfer service will conform to the direction of the RC under all circumstances and the RC shall have the right to direct that the amount of energy utilizing the dynamic transfer service be adjusted for local transmission reliability concerns. Attaining BA will be the attaining RC and under normal operating conditions, is responsible for the capacity, energy and dispatch of the Pseudo-Tie that is the subject of this Agreement.

1. **Performance/Reliability Requirements** 
   1. It is the obligation of each Balancing Authority to fulfill its commitment to the Eastern Interconnection. The use of this Pseudo-Tie in no way lessens or diminishes a Balancing Authority’s reliability or performance expectations as defined by NERC.
   2. All data transfer associated with this Pseudo-Tie shall have a primary path utilizing Inter-Control Center Communications Protocol (“ICCP”) communications.
2. **Operational and Modeling Requirements**
   1. The use of this Pseudo-Tie as between Native BA and Generator Owner shall be modeled in accordance with Native BA’s established practices and Good Utility Practice. Accordingly, Attaining BA shall use Good Utility Practice to prepare and provide forecast data set forth in accordance with NERC standards. Specifically, Attaining BA shall provide to Native BA unit commitment data in the form of hourly dispatch forecasts for the next operating day.
   2. Tagging of the Pseudo-Tie is not required since (1) neither NERC nor NAESB standards that are currently effective require Pseudo-Tie transactions to be tagged and (2) information about the Pseudo-Tie is included in congestion management procedures via an alternate method as described in Section 4.3 of this Agreement.
   3. Attaining BA shall include the generator real power output of [generation facility], in its Market Flow impacts, report such Market Flow impacts to the Interchange Distribution Calculator (“IDC”), and otherwise coordinate and manage congestion in accordance with the Congestion Management Process. In addition, Attaining BA shall model the [generation facility] as a “must run” unit in its Attaining BA Market Flow study.
   4. Generator real power output of, and management thereof, for [insert amount] MW of [generation facility] is considered within the Attaining BA BAA for all purposeful application, implementation, and execution of NERC Reliability Standards requirements for the duration of this Agreement. Generator Owner will calculate the value for this Pseudo-Tie from its contractual authority for [insert amount] MW of [generation facility] and will provide this value to both Attaining BA and Native BA via ICCP. Attaining BA will also forward to Native BA the Pseudo-Tie value it received from Generator Owner. Native BA will send back to Attaining BA and Generator Owner the final Pseudo-Tie value.
   5. Generator Owner will clamp the maximum amount for the Pseudo-Tie value to [insert amount] MW and the minimum to 0 MW.
3. **Establishment of Coordinated Flowgates**
   1. Native BA may propose additional Coordinated Flowgates (as defined in the Congestion Management Process) to be included in Attaining BA’s congestion management and coordination procedure subject to the requirements of the Congestion Management Process. Native BA shall provide Attaining BA with any information necessary for Attaining BA to conduct such studies. Attaining BA shall study those flowgates in accordance with Section 3.2 (Coordinated Flowgates) of the Congestion Management Process, as amended from time to time, and communicate the results of the studies to Native BA within a reasonable period. Attaining BA shall add a flowgate to its Congestion Management Process if the flowgate passes the studies in Section 3.2 of the Congestion Management Process.
   2. Attaining BA shall add Coordinated Flowgates to its congestion management procedures in accordance with sensitivity studies described in the Congestion Management Process.
4. **Energy Accounting** 
   1. In the event the Parties do not agree upon the hourly values associated with the Pseudo-Tie in after-the-fact checkouts, values recorded by Native BA will be used by all Parties.
5. **Contingency Operational Requirements**
   1. If the Pseudo-Tie signal is lost or determined to be unacceptable, or the telemetry from the [generation facility] to Native BA is lost or determined to be unacceptable, operation of the Pseudo-Tie will continue under the following procedure.

7.1.1. Native BA or Attaining BA will notify Generator Owner of the failure.

7.1.2. Native BA will hold the last known accurate value on the Pseudo-Tie until it is determined to be inaccurate or a more accurate value is provided by Generator Owner.

7.1.3. Changes to the manually-updated Pseudo-Tie value cannot occur more frequently than once per hour unless otherwise mutually agreed upon by all Parties.

7.1.4. To the extent possible, the Party maintaining the failed telemetry will provide a reasonable estimate of anticipated time of restoration.

7.1.5. If the primary data source is not restored within 24 hours, all Parties must agree on a plan to restore an acceptable data source for the Pseudo-Tie to continue.

7.2 If the Pseudo-Tie resource is redispatched for a local transmission system contingency, Native BA reserves the right to direct the operation of the resource.

7.3 All Balancing Authorities shall retain Regional Entity responsibilities and no liability or costs shall be shifted to other Balancing Authorities as a result of an outage.

1. **Indemnity and Consequential Damages**
   1. Generator Owner shall at all times indemnify, defend, and save Native BA and Attaining BA harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from Native BA’s or Attaining BA’s performance of its respective obligations under this Agreement on behalf of Generator Owner, except in cases of negligence or intentional wrongdoing by Native BA or Attaining BA, respectively.

8.2 In no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability related to this Agreement, except to the extent the damages are direct damages that arise or result from or result from gross negligence or intentional misconduct of the Party.

1. **References to Agreements and Tariffs on File with FERC**

Unless a clear contrary intention appears, any reference to any agreement or tariff means such agreement as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

1. **Dispute Resolution**
   1. **Internal Dispute Resolution Procedures**: Any dispute between or among the Parties under the Agreement shall be referred to a designated senior representative of the each “Disputing 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 Disputing Parties may agree upon, by mutual agreement, such dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.
   2. **External Arbitration Procedures**: Any arbitration initiated under the Agreement shall be conducted before a single neutral arbitrator appointed by the Disputing Parties. If the Disputing Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Disputing 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 Disputing Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable FERC regulations.
   3. **Arbitration Decisions**: Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Disputing Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Agreement and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Disputing Parties, and judgment on the award may be entered in any court having jurisdiction. 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. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service or facilities.
   4. **Costs**: Each Disputing Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (A) the cost of the arbitrator chosen by the Disputing Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (B) one half the cost of the single arbitrator jointly chosen by the Disputing Parties.
   5. **Rights Under The Federal Power Act**: Nothing in this section shall restrict the rights of any Party to file a complaint with FERC under relevant provisions of the Federal Power Act.
2. **Interpretation**

In the event of a conflict between the terms and conditions in this Agreement and the terms and conditions in a Party’s respective tariffs on file with FERC, the Party’s tariff shall control.

1. **Term and Termination**
   1. Any Party may unilaterally terminate this Agreement at any time upon not less than thirty-seven months’ written notice to the other Parties prior to the commencement of a Delivery Year.
   2. This Agreement may be terminated at any time by mutual agreement in writing.
   3. Termination in the event of Breach.

12.4.1 No Breach shall exist where such failure to discharge an obligation is the result of force majeure as described in section 15 of this Agreement or the result of an act of omission of the other Party. Upon a Breach, the non-breaching Party shall give written notice of such Breach to the breaching Party. The breaching Party shall have thirty (30) calendar days from receipt of the default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) calendar days, the breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

12.4.2 Right to Terminate. If a Breach is not cured as provided in this article, or if a Breach is not capable of being cured within the period provided for herein, the non-breaching Party shall be relieved of any further obligation hereunder. The provisions of this article will survive termination of this Agreement.

1. **Permitted Assignments.**

This Agreement may not be assigned by any Party except: (a) with the written consent of the non-assigning Parties, which consent may be withheld in such Parties’ absolute discretion; and (b) in the case of a merger, consolidation, sale, or spin-off of substantially all of a Party’s assets. In the case of a merger, consolidation, sale, reorganization, or spin-off by a Party, such Party shall assure that the successor or purchaser adopts this Agreement, and the other Parties shall be deemed to have consented to such adoption.

1. **Liability to Non-Parties**

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person or entity that is not a Party or a permitted successor or assign.

1. **Force Majeure**

No Party shall be in Breach of this Agreement to the extent and during the period that such Party’s performance is made impracticable by any unanticipated cause or causes beyond such Party’s control, and without such Party’s fault or negligence, which may include, but are not limited to, any act, omission, or circumstance occasioned by or in consequence of any act of God, labor dispute, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, or curtailment, order, regulation or restriction imposed by a governmental authority. Upon the occurrence of an event considered by a Party to constitute a force majeure event, such Party shall use reasonable efforts to endeavor to continue to perform its obligations as far as reasonably practicable and to remedy the event, provided that this Section shall not require any Party to settle any strike or labor dispute. A Party claiming a force majeure event shall notify the other Parties in writing immediately, and in no event later than forty-eight (48) hours after the occurrence of the force majeure event. The foregoing notwithstanding, the occurrence of a cause under this Section shall not excuse a Party from making any payment otherwise required under this Agreement.

1. **Amendment**

Nothing contained in this Agreement shall be construed as affecting in any way the right of Native BA to unilaterally make application to FERC for a change in rates, terms and conditions, charges, classification of service, rule or regulation under Section 205 of the Federal Power Act and pursuant to FERC’s rules and regulations promulgated thereunder, and nothing contained in the Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Agreement to exercise its rights under the Federal Power Act and pursuant to the FERC’s rules and regulations promulgated thereunder.

1. **Headings**

The headings used for the Articles and Sections of this Agreement are for convenience and reference purposes only, and shall not be construed to modify, expand, limit, or restrict the provisions of this Agreement.

1. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together will constitute one instrument, binding upon the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart.

1. **Notices**

A notice (“Notice”) shall be effective only if in writing and delivered by: hand; reputable overnight courier; electronic mail; or United States mail. Notice shall be deemed to have been given: (a) when delivered to the recipient by hand, overnight courier or electronic mail, or (b) if delivered by United States mail, on the postmark date. Notice shall be addressed as follows:

Attaining BA: [insert name]   
[insert title]  
[name of Attaining BA]  
[insert street address]  
[city, state, zip code]  
[insert phone number]

[insert email address]

Native BA: [insert name]   
[insert title]  
[name of Native BA]  
[insert street address]  
[city, state, zip code]  
[insert phone number]

[insert email address]

Generator Owner: [insert name]   
[insert title]  
[name of Generator Owner]  
[insert street address]  
[city, state, zip code]  
[insert phone number]

[insert email address]

A Party may change its designated recipient of Notices, or its address, from time to time, by giving Notice of such change.

Generator Owner may appoint an agent from time-to-time that will be responsible for implementation of the Pseudo-Tie. If Generator Owner appoints an agent, a written procedure will be developed that will inform the Parties as to which types of notices should be directed to the agent and provide all applicable contact information.

1. **Governing Law**

This Agreement and the rights and duties of the Parties relating to this Agreement shall be governed by and construed in accordance with the Federal laws of the United States of America, including but not limited to federal, and general contract law.

1. **Prior Agreements; Entire Agreement**

All prior agreements by or among all the Parties relating to the matters contemplated by this Agreement, whether written or oral, are superseded by this Agreement, and shall be of no further force or effect.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

**ATTAINING BA**

By:

Name:

Title:

Date:

**NATIVE BA**

By:

Name

Title

Date:

**GENERATOR OWNER**

By:

Name:

Title:

Date: