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December 3, 2018

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *PJM Interconnection, L.L.C.*, Docket No. ER17-349-\_\_\_\_

Dear Secretary Bose:

Pursuant to the November 1, 2018 order<sup>1</sup> issued by the Federal Energy Regulatory Commission (“Commission”) in the above docket, PJM Interconnection, L.L.C. (“PJM”) and Transource Energy LLC, for itself and on behalf of Transource Maryland, LLC (“Transource Maryland”) and Transource Pennsylvania, LLC (“Transource Pennsylvania”) (collectively, “Joint Parties”) submit this filing in compliance with the directives of the November 1 Order. Specifically, the Commission directed PJM to make a compliance filing in the above docket within 30 days of the November 1 Order to submit revisions to the Designated Entity Agreement entered into between PJM and Transource Energy LLC<sup>2</sup> to replace certain language in Schedule E (Non-Standard Terms and Conditions) to conform with Commission-accepted changes to the formula rates for Transource Maryland and Transource Pennsylvania made to

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<sup>1</sup> *PJM Interconnection, L.L.C.*, Order Accepting Compliance Filing Subject to Condition, Docket No. ER17-349-000 (Nov. 1, 2018) (“November 1 Order”).

<sup>2</sup> Designated Entity Agreement between PJM Interconnection, L.L.C. and Transource Energy, LLC, for itself and on behalf of Transource Maryland, LLC and Transource Pennsylvania, LLC, designated as Original Service Agreement No. 4579 (“Transource DEA”). See *PJM Interconnection, L.L.C.*, Transource Energy, LLC Designated Entity Agreement, Docket No. ER17-349-000 (Nov. 14, 2016).

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implement the Offer of Settlement filed with the Commission in Docket No. ER17-419-000.<sup>3</sup> Consistent with the November 1 Order, which accepted PJM's March 2 Compliance Filing<sup>4</sup> effective November 2, 2016,<sup>5</sup> the Joint Parties request an effective date of November 2, 2016 for the changes to Schedule E of the Transource DEA made in this compliance filing.

## I. COMPLIANCE FILING

The November 1 Order found certain terms of the Transource DEA to be inconsistent with the Offer of Settlement and corresponding changes to the Transource formula rates. First, the Commission found that Schedule E, paragraph (c) of the Transource DEA may allow, under certain circumstances, a higher equity component of the capital structure than the terms approved under the Offer of Settlement. Specifically, the Transource DEA, Schedule E, paragraph (c) currently reads as follows:

The Transource Subsidiaries commit to an actual equity content of no greater than 50 percent for the Project, once permanent financing is in place. Transource shall be granted relief from this commitment if the capital market conditions do not remain normal and the Transource Subsidiaries do not have the ability to finance these transmission projects with the proposed capital structure.

As directed by the Commission in the November 1 Order, the Joint Parties propose to replace the current language in Schedule E, paragraph (c) with the following language from the revised formula rate:

The Transource Subsidiaries commit to cap the equity component of the capital structure for the competitive elements of the Project at 50% beginning on the earlier of

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<sup>3</sup> *PJM Interconnection, L.L.C.*, Offer of Settlement, Docket No. ER17-419-000 (Oct. 2, 2017) ("Offer of Settlement"). On January 18, 2018, the Commission issued an order conditionally accepting the Offer of Settlement subject to compliance filing. *PJM Interconnection, L.L.C.*, 162 FERC ¶ 61,032 at P 5 (2018) ("Settlement Order"). By letter order dated September 21, 2018, the Commission accepted the compliance filings in Docket Nos. ER17-419-001, ER17-419-004 and ER17-417-005.

<sup>4</sup> *PJM Interconnection, L.L.C.*, Compliance Filing, Docket No. ER17-349-000 (Mar. 2, 2017) ("March 2 Compliance Filing").

<sup>5</sup> November 1 Order at P 14.

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(a) Project 9A's in-service date, (b) the date non-construction debt (i.e., permanent financing) is put in place, or (c) June 1, 2020.

Second, the November 1 Order indicates that the Transource DEA should be conformed to the changes made to the Transource formula rates to implement the approved Offer of Settlement and highlights language added to the formula rates that states: “the requirement that the Company forgo any ROE incentives (including the 50 basis point RTO participation adder) for any Project 9A costs that exceed \$210 million on the date the project is placed into service.”<sup>6</sup> The specification of \$210 million as the cap on the project costs eligible for ROE incentives is an update to the original language in Schedule E that defines “Estimated Project Cost” as the basis for specifying this limit on recovery of ROE incentives. Thus, to align the Transource DEA with the terms of the Offer of Settlement and the revised formula rates, the Joint Parties propose to revise the first sentence following the heading “Project Cost” in Schedule E to read: “The Estimated Project Cost is \$210 million.”

The Joint Parties also propose to add a reference to the Settlement in Schedule E, to be clear that the terms of Schedule E are consistent with both Transource’s original proposal to PJM and the terms of the Offer of Settlement.

## II. DOCUMENTS ENCLOSED

Joint Parties enclose the following:

1. Transmittal Letter;
2. Transource DEA, Service Agreement No. 4579 (clean format);
3. Transource DEA, Service Agreement No. 4579 (redline format).

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<sup>6</sup> November 1 Order at P 18.

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**III. CORRESPONDENCE**

Correspondence and communications regarding this filing should be sent to the following persons:

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Respectfully submitted,

By:  \_\_\_\_\_  
Pauline Foley

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/s/ Amanda Riggs Conner  
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*Counsel for Transource Energy, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document on those parties on the official Service List compiled by the Secretary in these proceedings.

Dated at Audubon, Pennsylvania this 3<sup>rd</sup> day of December 2018.

/s/ Pauline Foley  
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# **ATTACHMENT A**

**Service Agreement No. 4579  
(Marked Tariff)**

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT**

**Between**

**PJM Interconnection, L.L.C.**

**And**

**Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC**

**(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT****Between****PJM Interconnection, L.L.C.****And****Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC****(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

This Designated Entity Agreement, including the Schedules attached hereto and incorporated herein (collectively, "Agreement") is made and entered into as of the Effective Date between PJM Interconnection, L.L.C. ("Transmission Provider" or "PJM"), and Transource Energy, LLC ("Designated Entity" or "Transource"), referred to herein individually as "Party" and collectively as "the Parties."

**WITNESSETH**

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

WHEREAS, pursuant to Section 1.5.8(i) of Schedule 6 of the Operating Agreement, the Transmission Provider notified Designated Entity that it was designated as the Designated Entity for the Project (described in Schedule A to this Agreement) to be included in the Regional Transmission Expansion Plan;

WHEREAS, pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity accepted the designation as the Designated Entity for the Project and therefore has the obligation to construct the Project; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

## **Article 1 – Definitions**

### **1.0 Defined Terms.**

All capitalized terms used in this Agreement shall have the meanings ascribed to them in Part I of the Tariff or in definitions either in the body of this Agreement or its attached Schedules. In the event of any conflict between defined terms set forth in the Tariff or defined terms in this Agreement, including the Schedules, such conflict will be resolved in favor of the terms as defined in this Agreement.

### **1.1 Confidential Information.**

Any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the Project or Transmission Owner facilities to which the Project will interconnect, which is designated as confidential by the party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, but may not be limited to, information relating to the producing party's technology, research and development, business affairs and pricing, land acquisition and vendor contracts relating to the Project.

### **1.2 Designated Entity Letter of Credit.**

Designated Entity Letter of Credit shall mean the letter of credit provided by the Designated Entity pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement as security associated with the Project.

### **1.3 Development Schedule.**

Development Schedule shall mean the schedule of milestones set forth in Schedule C of this Agreement.

### **1.4 Effective Date.**

Effective Date shall mean the date this Agreement becomes effective pursuant to Section 2.0 of this Agreement.

### **1.5 Initial Operation.**

Initial Operation shall mean the date the Project is (i) energized and (ii) under Transmission Provider operational dispatch.

### **1.6 Project.**

Project shall mean the enhancement or expansion included in the PJM Regional Transmission Expansion Plan described in Schedule A of this Agreement.

### **1.7 Project Finance Entity.**

Project Finance Entity shall mean holder, trustee or agent for holders, of any component of Project Financing.

### **1.8 Project Financing.**

Project Financing shall mean: (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Project, any alteration, expansion or improvement to the Project, or the operation of the Project; or (b) loans and/or debt issues secured by the Project.

### **1.9 Reasonable Efforts.**

Reasonable Efforts shall mean such efforts as are consistent with ensuring the timely and effective design and construction of the Project in a manner, which ensures that the Project, once placed in service, meets the requirements of the Project as described in Schedule B and are consistent with Good Utility Practice.

### **1.10 Required Project In-Service Date.**

Required Project In-Service Date shall mean the date the Project is required to: (i) be completed in accordance with the Scope of Work in Schedules B this Agreement, (ii) meet the criteria outlined in Schedule D of this Agreement and (iii) be under Transmission Provider operational dispatch.

## **Article 2 – Effective Date and Term**

### **2.0 Effective Date.**

Subject to regulatory acceptance, this Agreement shall become effective on the date the Agreement has been executed by all Parties, or if this Agreement is filed with FERC for acceptance, rather than reported only in PJM's Electric Quarterly Report, upon the date specified by FERC.

### **2.1 Term.**

This Agreement shall continue in full force and effect from the Effective Date until: (i) the Designated Entity executes the Consolidated Transmission Owners Agreement; and (ii) the Project (a) has been completed in accordance with the terms and conditions of this Agreement, (b) meets all relevant required planning criteria, and (c) is under Transmission Provider's

operational dispatch; or (iii) the Agreement is terminated pursuant to Article 8 of this Agreement.

### **Article 3 – Security**

#### **3.0 Obligation to Provide Security.**

In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$5,550,000, which is three percent of the estimated cost of the Project. Designated Entity is required provide and maintain the Designated Entity Letter of Credit, as required by Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement. The Designated Entity Letter of Credit shall remain in full force and effect for the term of this Agreement and for the duration of the obligations arising therefrom in accordance with Article 17.0.

#### **3.1 Distribution of Designated Entity Letter of Credit or Cash Security.**

In the event that Transmission Provider draws upon the Designated Entity Letter of Credit or retains the cash security in accordance with Sections 7.5, 8.0, or 8.1, Transmission Provider shall distribute such funds as determined by FERC.

### **Article 4 – Project Construction**

#### **4.0 Construction of Project by Designated Entity.**

Designated Entity shall design, engineer, procure, install and construct the Project, including any modifications thereto, in accordance with: (i) the terms of this Agreement, including but not limited to the Scope of Work in Schedule B and the Development Schedule in Schedule C; (ii) applicable reliability principles, guidelines, and standards of the Applicable Regional Reliability Council and NERC; (iii) the Operating Agreement; (iv) the PJM Manuals; and (v) Good Utility Practice.

#### **4.1 Milestones.**

##### **4.1.0 Milestone Dates.**

Designated Entity shall meet the milestone dates set forth in the Development Schedule in Schedule C of this Agreement. Milestone dates set forth in Schedule C only may be extended by Transmission Provider in writing. Failure to meet any of the milestone dates specified in Schedule C, or as extended as described in this Section 4.1.0 or Section 4.3.0 of this Agreement, shall constitute a Breach of this Agreement. Transmission Provider reasonably may extend any such milestone date, in the event of delays not caused by the Designated Entity that could not be remedied by the Designated Entity through the exercise of due diligence, or if an extension will not delay the Required Project In-Service Date specified in Schedule C of this Agreement; provided that a corporate officer of the Designated Entity submits a revised Development

Schedule containing revised milestones and showing the Project in full operation no later than the Required Project In-Service Date specified in Schedule C of this Agreement.

#### **4.1.1 Right to Inspect.**

Upon reasonable notice, Transmission Provider shall have the right to inspect the Project for the purposes of assessing the progress of the Project and satisfaction of milestones. Such inspection shall not be deemed as review or approval by Transmission Provider of any design or construction practices or standards used by the Designated Entity.

#### **4.2 Applicable Technical Requirements and Standards.**

For the purposes of this Agreement, applicable technical requirements and standards of the Transmission Owner(s) to whose facilities the Project will interconnect shall apply to the design, engineering, procurement, construction and installation of the Project to the extent that the provisions thereof relate to the interconnection of the Project to the Transmission Owner(s) facilities.

#### **4.3 Project Modification.**

##### **4.3.0 Project Modification Process.**

The Scope of Work and Development Schedule, including the milestones therein, may be revised, as required, in accordance with Transmission Provider's project modification process set forth in the PJM Manuals, or otherwise by Transmission Provider in writing. Such modifications may include alterations as necessary and directed by Transmission Provider to meet the system condition for which the Project was included in the Regional Transmission Expansion Plan.

##### **4.3.1 Consent of Transmission Provider to Project Modifications.**

Designated Entity may not modify the Project without prior written consent of Transmission Provider, including but not limited to, modifications necessary to obtain siting approval or necessary permits, which consent shall not be unreasonably withheld, conditioned, or delayed.

##### **4.3.2 Customer Facility Interconnections And Transmission Service Requests.**

Designated Entity shall perform or permit the engineering and construction necessary to accommodate the interconnection of Customer Facilities to the Project and transmission service requests that are determined necessary for such interconnections and transmission service requests in accordance with Parts IV and VI, and Parts II and III, respectively, of the Tariff.

#### **4.4 Project Tracking.**

The Designated Entity shall provide regular, quarterly construction status reports in writing to Transmission Provider. The reports shall contain, but not be limited to, updates and information specified in the PJM Manuals regarding: (i) current engineering and construction status of the Project; (ii) Project completion percentage, including milestone completion; (iii) current target

Project or phase completion date(s); (iv) applicable outage information; and (v) cost expenditures to date and revised projected cost estimates for completion of the Project. Transmission Provider shall use such status reports to post updates regarding the progress of the Project.

#### **4.5 Exclusive Responsibility of Designated Entity.**

Designated Entity shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with applicable laws and regulations associated with the Project, including but not limited to obtaining all necessary permits, siting, and other regulatory approvals. Transmission Provider shall have no responsibility to manage, supervise, or ensure compliance or adequacy of same.

### **Article 5 – Coordination with Third-Parties**

#### **5.0 Interconnection Coordination Agreement with Transmission Owner(s).**

By the dates specified in the Development Schedule in Schedule C of this Agreement, Designated Entity shall execute or request to file unexecuted with the Commission: (a) an Interconnection Coordination Agreement; and (b) an interconnection agreement among and between Designated Entity, Transmission Provider, and the Transmission Owner(s) to whose facilities the Project will interconnect.

#### **5.1 Connection with Entities Not a Party to the Consolidated Transmission Owners Agreement.**

Designated Entity shall not permit any part of the Project facilities to be connected with the facilities of any entity which is not: (i) a party to Consolidated Transmission Owners Agreement without an interconnection agreement that contains provisions for the safe and reliable interconnection and operation of such interconnection in accordance with Good Utility Practice, and principles, guidelines and standards of the Applicable Regional Reliability Council and NERC or comparable requirements of an applicable retail tariff or agreement approved by appropriate regulatory authority; or (ii) a party to a separate Designated Entity Agreement.

### **Article 6 – Insurance**

#### **6.0 Designated Entity Insurance Requirements.**

Designated Entity shall obtain and maintain in full force and effect such insurance as is consistent with Good Utility Practice. The Transmission Provider shall be included as an Additional Insured in the Designated Entity's applicable liability insurance policies. The Designated Entity shall provide evidence of compliance with this requirement upon request by the Transmission Provider.

## **6.1 Subcontractor Insurance.**

In accord with Good Utility Practice, Designated Entity shall require each of its subcontractors to maintain and, upon request, provide Designated Entity evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding and hiring of contractors or subcontractors shall be the Designated Entity's discretion, but regardless of bonding or the existence or non-existence of insurance, the Designated Entity shall be responsible for the performance or non-performance of any contractor or subcontractor it hires.

## **Article 7 – Breach and Default**

### **7.0 Breach.**

Except as otherwise provided in Article 10, a Breach of this Agreement shall include:

(a) The failure to comply with any term or condition of this Agreement, including but not limited to, any Breach of a representation, warranty, or covenant made in this Agreement, and failure to provide and maintain security in accordance with Section 3.0 of this Agreement;

(b) The failure to meet a milestone or milestone date set forth in the Development Schedule in Schedule C of this Agreement, or as extended in writing as described in Sections 4.1.0 and 4.3.0 of this Agreement;

(c) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or

(d) Failure of any Party to provide information or data required to be provided to another Party under this Agreement for such other Party to satisfy its obligations under this Agreement.

### **7.1 Notice of Breach.**

In the event of a Breach, a Party not in Breach of this Agreement shall give written notice of such Breach to the breaching Party, and to any other persons, including a Project Finance Entity, if applicable, that the breaching Party identifies in writing prior to the Breach. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

### **7.2 Cure and Default.**

A Party that commits a Breach and does not take steps to cure the Breach pursuant to Section 7.3 shall be in Default of this Agreement.

### **7.3 Cure of Breach.**

The breaching Party may: (i) cure the Breach within thirty days from the receipt of the notice of Breach or other such date as determined by Transmission Provider to ensure that the Project meets its Required Project In-Service Date set forth in Schedule C; or, (ii) if the Breach cannot be cured within thirty days but may be cured in a manner that ensures that the Project meets the Required Project In-Service Date for the Project, within such thirty day time period, commences in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion.

### **7.4 Re-evaluation if Breach Not Cured.**

In the event that a breaching Party does not cure a Breach in accordance with Section 7.3 of this Agreement, Transmission Provider shall conduct a re-evaluation pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement. If based on such re-evaluation, the Project is retained in the Regional Transmission Expansion Plan and the Designated Entity's designation for the Project also is retained, the Parties shall modify this Agreement, including Schedules, as necessary. In all other events, Designated Entity shall be considered in Default of this Agreement, and this Agreement shall terminate in accordance with Section 8.1 of this Agreement.

### **7.5 Remedies.**

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have in equity or at law. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit. Nothing in this Section 7.5 is intended in any way to affect the rights of a third-party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity's Default of this Agreement.

### **7.6 Remedies Cumulative.**

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

### **7.7 Waiver.**

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall

not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

## **Article 8 – Early Termination**

### **8.0 Termination by Transmission Provider.**

In the event that: (i) pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement, Transmission Provider determines to remove the Project from the Regional Transmission Expansion Plan and/or not to retain Designated Entity's status for the Project; (ii) Transmission Provider otherwise determines pursuant to Regional Transmission Expansion Planning Protocol in Schedule 6 of the Operating Agreement that the Project is no longer required to address the specific need for which the Project was included in the Regional Transmission Expansion Plan; or (iii) an event of force majeure, as defined in section 10.0 of this Attachment KK, or other event outside of the Designated Entity's control that, with the exercise of Reasonable Efforts, Designated Entity cannot alleviate and which prevents the Designated Entity from satisfying its obligations under this Agreement, Transmission Provider may terminate this Agreement by providing written notice of termination to Designated Entity, which shall become effective the later of sixty calendar days after the Designated Entity receives such notice or other such date the FERC establishes for the termination. In the event termination pursuant to this Section 8.0 is based on (ii) or (iii) above, Transmission Provider shall not have the right to draw upon the Designated Entity Letter of Credit or retain the cash security and shall cancel the Designated Entity Letter of Credit or return the cash security within thirty days of the termination of this Agreement.

### **8.1 Termination by Default.**

This Agreement shall terminate in the event a Party is in Default of this Agreement in accordance with Sections 7.2 or 7.4 of this Agreement. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit or retain the cash security.

### **8.2 Filing at FERC.**

Transmission Provider shall make the appropriate filing with FERC as required to effectuate the termination of this Agreement pursuant to this Article 8.

## **Article 9 – Liability and Indemnity**

### **9.0 Liability.**

For the purposes of this Agreement, Transmission Provider's liability to the Designated Entity, any third-party, or any other person arising or resulting from any acts or omissions associated in any way with performance under this Agreement shall be limited in the same manner and to the same extent that Transmission Provider's liability is limited to any Transmission Customer, third-party or other person under Section 10.2 of the Tariff arising or resulting from any act or

omission in any way associated with service provided under the Tariff or any Service Agreement thereunder.

### **9.1 Indemnity.**

For the purposes of this Agreement, Designated Entity shall at all times indemnify, defend, and save Transmission Provider and its directors, managers, members, shareholders, officers and employees 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 the Transmission Provider's acts or omissions associated with the performance of its obligations under this Agreement to the same extent and in the same manner that a Transmission Customer is required to indemnify, defend and save Transmission Provider and its directors, managers, members, shareholders, officers and employees harmless under Section 10.3 of the Tariff.

## **Article 10 – Force Majeure**

### **10.0 Force Majeure.**

For the purpose of this section, an event of force majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightening, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which in any foregoing cases, by exercise of due diligence, it has been unable to overcome. An event of force majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remedial causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

### **10.1 Notice.**

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing within a reasonable time after the occurrence of the cause relied on.

### **10.2 Duration of Force Majeure.**

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any deficiency or failure to perform any obligation under this Agreement to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the

occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that Designated Entity is unable to perform any of its obligations under this Agreement because of an occurrence of Force Majeure, Transmission Provider may terminate this Agreement in accordance with Section 8.0 of this Agreement.

### **10.3 Breach or Default of or Force Majeure under Interconnection Coordination Agreement**

If either of the following events prevents Designated Entity from performing any of its obligations under this Agreement, such event shall be considered a Force Majeure event under this Agreement and the provisions of this Article 10 shall apply: (i) a breach or default of the Interconnection Coordination Agreement associated with the Project by a party to the Interconnection Coordination Agreement other than the Designated Entity; or (ii) an event of Force Majeure under the Interconnection Coordination Agreement associated with the Project.

## **Article 11 – Assignment**

### **11.0 Assignment.**

A Party may assign all of its rights, duties, and obligations under this Agreement in accordance with this Section 11.0. Except for assignments described in Section 11.1 of this Agreement that may not result in the assignment of all rights, duties, and obligations under this Agreement to a Project Finance Entity, no partial assignments will be permitted. No Party may assign any of its rights or delegate any of its duties or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Assignment by the Designated Entity shall be contingent upon, prior to the effective date of the assignment: (i) the Designated Entity or assignee demonstrating to the satisfaction of Transmission Provider that the assignee has the technical competence and financial ability to comply with the requirements of this Agreement and to construct the Project consistent with the assignor's cost estimates for the Project; and (ii) the assignee is eligible to be a Designated Entity for the Project pursuant to Sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement. Except as provided in an assignment to a Finance Project Entity to the contrary, for all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement. Any assignment described herein shall not relieve or discharge the assignor from any of its obligations hereunder absent the written consent of the other Party. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the terms of this Agreement, the Tariff and the Operating Agreement.

## **11.1 Project Finance Entity Assignments**

### **11.1.1 Assignment to Project Finance Entity**

If an arrangement between the Designated Entity and a Project Finance Entity provides that the Project Finance Entity may assume any of the rights, duties and obligations of the Designated Entity under this Agreement or otherwise provides that the Project Finance Entity may cure a Breach of this Agreement by the Designated Entity, the Project Finance Entity may be assigned this Agreement or any of the rights, duties, or obligations hereunder only upon written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement.

### **11.1.2 Assignment By Project Finance Entity**

A Project Finance Entity that has been assigned this Agreement or any of the rights, duties or obligations under this Agreement or otherwise is permitted to cure a Breach of this Agreement, as described pursuant to Section 11.1.1 above, may assign this Agreement or any of the rights, duties or obligations under this Agreement to another entity not a Party to this Agreement only: (i) upon the Breach of this Agreement by the Designated Entity; and (ii) with the written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement alter or diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the Tariff and Operating Agreement.

## **Article 12 – Information Exchange**

### **12.0 Information Access.**

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out each Party's obligations and responsibilities under this Agreement, the Operating Agreement, and the Tariff. Such information shall include but not be limited to, information reasonably requested by Transmission Provider to prepare the Regional Transmission Expansion Plan. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement, the Operating Agreement, and the Tariff.

### **12.1 Reporting of Non-Force Majeure Events.**

Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to

cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section 12.1 shall not entitle the receiving Party to allege a cause of action for anticipatory Breach of this Agreement.

### **Article 13 – Confidentiality**

#### **13.0 Confidentiality.**

For the purposes of this Agreement, information will be considered and treated as Confidential Information only if it meets the definition of Confidential Information set forth in Section 1.1 of this Agreement and is clearly designated or marked in writing as “confidential” on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is “confidential.” Confidential Information shall be treated consistent with Section 18.17 of the Operating Agreement. A Party shall be responsible for the costs associated with affording confidential treatment to its information.

### **Article 14 – Regulatory Requirements**

#### **14.0 Regulatory Approvals.**

Designated Entity shall seek and obtain all required government authority authorizations or approvals as soon as reasonably practicable, and by the milestone dates set forth in the Development Schedule of Schedule C of this Agreement, as applicable.

### **Article 15 – Representations and Warranties**

#### **15.0 General.**

Designated Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Designated Entity during the full time this Agreement is effective:

##### **15.0.1 Good Standing**

Designated Entity is duly organized or formed, as applicable, validly existing and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated.

### **15.0.2 Authority**

Designated Entity has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of Designated Entity, enforceable against Designated Entity in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

### **15.0.3 No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of Designated Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon Designated Entity or any of its assets.

## **Article 16 – Operation of Project**

### **16.0 Initial Operation.**

The following requirements shall be satisfied prior to Initial Operation of the Project:

#### **16.0.1 Execution of the Consolidated Transmission Owners Agreement**

Designated Entity has executed the Consolidated Transmission Owners Agreement and is able to meet all requirements therein.

#### **16.0.2 Execution of an Interconnection Agreement**

Designated Entity has executed an Interconnection Agreement with the Transmission Owner(s) to whose facilities the Project will interconnect, or such agreement has been filed unexecuted with the Commission.

#### **16.0.3 Operational Requirements**

The Project must meet all applicable operational requirements described in the PJM Manuals.

#### **16.0.4 Parallel Operation**

Designated Entity shall have all necessary systems and personnel in place to allow for parallel operation of its facilities with the facilities of the Transmission Owner(s) to which the Project is interconnected consistent with the Interconnection Coordination Agreement associated with the Project.

### **16.0.5 Synchronization**

Designated Entity shall have received any necessary authorization from Transmission Provider and the Transmission Owner(s) to whose facilities the Project will interconnect to synchronize with the Transmission System or to energize, as applicable, per the determination of Transmission Provider, the Project.

### **16.1 Partial Operation.**

If the Project is to be completed in phases, the completed part of the Project may operate prior to completion and Required Project In-Service Date set forth in Schedule C of this Agreement, provided that: (i) Designated Entity has notified Transmission Provider of the successful completion of the Project phase; (ii) Transmission Provider has determined that partial operation of the Project will not negatively impact the reliability of the Transmission System; (iii) Designated Entity has demonstrated that the requirements for Initial Operation set forth in Section 16.0 of this Agreement have been met for the Project phase; and (iv) partial operation of the Project is consistent with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice.

## **Article 17 – Survival**

### **17.0 Survival of Rights.**

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The Liability and Indemnity provisions in Article 9 also shall survive termination, expiration, or cancellation of this Agreement.

## **Article 18 – Non-Standard Terms and Conditions**

### **18.0 Schedule E – Addendum of Non-Standard Terms and Conditions.**

Subject to FERC acceptance or approval, the Parties agree that the terms and conditions set forth in the attached Schedule E are hereby incorporated by reference, and made a part of, this Agreement. In the event of any conflict between a provision of Schedule E that FERC has accepted and any provision of the standard terms and conditions set forth in this Agreement that relates to the same subject matter, the pertinent provision of Schedule E shall control.

## Article 19 – Miscellaneous

### 19.0 Notices.

Any notice or request made to or by any Party regarding this Agreement shall be made by U.S. mail or reputable overnight courier to the addresses set forth below:

Transmission Provider:  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
Attention: Manager, Infrastructure Coordination

Designated Entity:  
Transource Energy, LLC  
1 Riverside Plaza,  
Columbus, Ohio 43215-2372  
Attention: Antonio Smyth

### 19.1 No Transmission Service.

This Agreement does not entitle the Designated Entity to take Transmission Service under the Tariff.

### 19.2 No Rights.

Neither this Agreement nor the construction or the financing of the Project entitles Designated Entity to any rights related to Customer-Funded Upgrades set forth in Subpart C of Part VI of the Tariff.

### 19.3 Standard of Review.

Future modifications to this Agreement by the Parties or the FERC shall be subject to the just and reasonable standard and the Parties shall not be required to demonstrate that such modifications are required to meet the “public interest” standard of review as described in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

### 19.4 No Partnership.

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

**19.5 Headings.**

The Article and Section headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

**19.6 Interpretation.**

Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

**19.7 Severability.**

Each provision of this Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

**19.8 Further Assurances.**

Each Party hereby agrees that it shall hereafter execute and deliver such further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

**19.9 Counterparts.**

This Agreement may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

**19.10 Governing Law**

This Agreement shall be governed under the Federal Power Act and Delaware law, as applicable.

**19.11 Incorporation of Other Documents.**

The Tariff, the Operating Agreement, and the Reliability Assurance Agreement, as they may be amended from time to time, are hereby incorporated herein and made a part hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

**Transmission Provider: PJM Interconnection, L.L.C.**

By: /s/ Suzanne E. Glatz                      Manager, Infrastructure Coordination 11/2/2016  
Name    Title    Date

Printed name of signer: Suzanne E. Glatz

**Designated Entity: Transource Energy, LLC for itself and on behalf of Transource Maryland, LLC and Transource Pennsylvania, LLC**

By: /s/ Antonio P. Smith                      President                                      10-26-16  
Name    Title    Date

Printed name of signer: Antonio P. Smith

## SCHEDULE A

### Description of Project

#### Rice – Ringgold Line (b2743.5):

- Build new 230 kV double circuit overhead transmission line between the existing Ringgold Substation and the new Rice Substation; operated as a single circuit.

#### Rice Substation (b2743.1):

- Tap the existing Conemaugh - Hunterstown 500 kV line to tie in the new 500/230kV Rice Substation connecting to the new Rice - Ringgold 230 kV line.
- Install two 500/230 kV transformers, operated in parallel.

#### Furnace Run – Conastone Line (b2752.5):

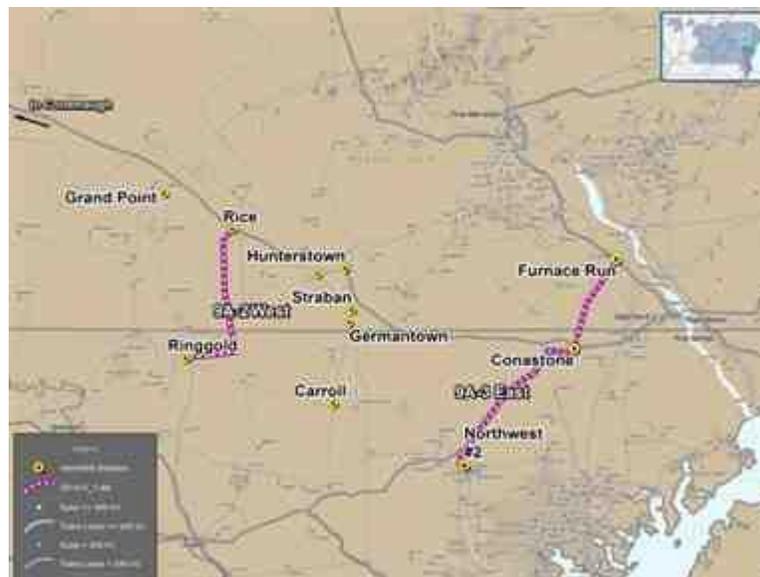
- Build new 230 kV double circuit overhead transmission line between the existing Conastone Substation and the new Furnace Run Substation; operated as a single circuit.

#### Furnace Run Substation (b2752.1):

- Tap the existing Peach Bottom - Three Mile Island 500 kV line to tie in the new 500/230kV Furnace Run Substation connecting to the new Furnace Run - Conastone 230 kV line.
- Install two 500/230 kV transformers, operated in parallel.

*Note:* Work required to rebuild the Conastone - Northwest 230 kV line will be covered under a separate RTEP project. The work required to replace the Ringgold #3 and #4 230/138 kV transformers, to reconfigure the Ringgold bus, and to rebuild & reconductor the Ringgold - Catoclin 138 kV & replace terminal equipment at both ends of the circuit will also be covered under a separate RTEP project.

#### *Project Area Map:*



## **SCHEDULE B**

### **Scope of Work**

The new Rice – Ringgold Line will include approximately 27 miles of double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1660 MVA summer normal and summer emergency, between the existing Ringgold Substation and the new Rice Substation.

The new Rice Substation will tie into the existing Hunterstown – Conemaugh 500 kV line. The transmission line and substation remote-end work required to tie the existing Hunterstown – Conemaugh 500 kV line into the new Rice Substation will be performed by others, and not by Transource. The new Rice Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- One 245 kV breaker in a single bus single breaker configuration.
- Three 500 kV breakers in a ring bus configuration.

The new Furnace Run – Conastone Line will include approximately 15 miles of new double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1800 MVA summer normal and 2400 MVA summer emergency, between the existing Conastone Substation and the new Furnace Run Substation.

The new Furnace Run Substation will tie into the existing Three Mile Island – Peach Bottom 500 kV line. The transmission line and substation remote-end work required to tie the existing Three Mile Island – Peach Bottom 500 kV line into the new Furnace Run Substation will be performed by others, and not by Transource. The new Furnace Run Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- Two 245 kV breakers in a double breaker single bus configuration.
- Four 500 kV breakers in a ring bus configuration.

## SCHEDULE C

### Development Schedule

Designated Entity shall ensure and demonstrate to the Transmission Provider that it timely has met the following milestones and milestone dates and that the milestones remain in good standing:

<b>Milestones and Milestone Dates</b>
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with PECO or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Metropolitan Edison Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Baltimore Gas and Electric Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Pennsylvania Electric Company or request the agreement be filed unexecuted.
<b>Demonstrate adequate Project financing.</b> On or before <u>December 31, 2016</u> , Designated Entity must demonstrate that adequate project financing has been secured. Project financing must be maintained for the term of this Agreement.
<b>Submit application for any required certificate of convenience and necessity.</b> On or before <u>June 1, 2018</u> , Designated Entity must demonstrate that any applications for any required state or local certificate(s) of convenience and necessity have been submitted or such certificates have been ruled as not required by the applicable states or local governmental authorities.
<b>Acquisition of all necessary federal, state, county, and local site permits.</b> On or before <u>December 1, 2019</u> , Designated Entity must demonstrate that all required federal, state, county and local site permits have been acquired.
<b>Delivery of major electrical equipment.</b> On or before <u>December 1, 2019</u> , Designated Entity must demonstrate that all major electrical equipment has been delivered to the project site.

**Substantial Site Work Completed:** On or before January 31, 2020, Designated Entity must demonstrate that at least 20% of Project site construction is completed. Additionally the Designated Entity must submit updated ratings and the final project drawings to the Transmission Provider.

**Demonstrate required ratings.** On or before May 1, 2020, Designated Entity must demonstrate that the project meets all required electrical ratings.

**Required Project In-Service Date.** On or before June 1, 2020, Designated Entity must: (i) demonstrate that the Project is completed in accordance with the Scope of Work in Schedules B of this Agreement; (ii) meets the criteria outlined in Schedule D of this Agreement; and (iii) is under Transmission Provider operational dispatch.

## SCHEDULE D

### PJM Planning Requirements and Criteria and Required Ratings

#### Required Ratings\*

##### Rice – Ringgold Line (b2743.5):

- 1660 / 1660 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - $R = 0.0025299$  pu
    - $X = 0.0275589$  pu
    - $B = 0.114035$  pu

##### Rice Substation (b2743.1):

- Two 900 MVA 500/230 kV transformers

##### Furnace Run – Conastone Line (b2752.5):

- 1800 / 2400 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - $R = 0.00134928$  pu
    - $X = 0.0146981$  pu
    - $B = 0.0608184$  pu

##### Furnace Run Substation (b2752.1):

- Two 900 MVA 500/230 kV transformers

\* These parameters may be updated and are subject to evaluation by PJM.

## SCHEDULE E

### Non-Standard Terms and Conditions

#### Project Development

The Parties acknowledge and agree that Transource Energy, LLC may utilize its wholly owned subsidiaries, Transource Pennsylvania, LLC and Transource Maryland, LLC (the “Transource Subsidiaries”), to perform its obligations to design, engineer, procure, install, and construct the Project.

Transource Pennsylvania, LLC shall design, engineer, procure, install, construct, own, operate and maintain the portion of the Project to be located in the Commonwealth of Pennsylvania, and Transource Maryland, LLC shall design, engineer, procure, install, construct, own, operate, and maintain the portion of the Project to be located in the State of Maryland. Transource Energy, LLC shall provide the overall coordination for the Project work.

The Transource Subsidiaries shall obtain all necessary permits, siting, and other regulatory approvals to undertake their respective portions of the Project and shall perform their work in accordance with the terms of this Designated Entity Agreement.

In accordance with Sections 5.0, 16.0.1, and 16.0.2, of this Designated Entity Agreement:

- (a) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Consolidated Transmission Owners Agreement;
- (b) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Interconnection Coordination Agreement for the Project; and
- (c) The Transource Subsidiaries each shall execute interconnection agreements with Transmission Owners with whom their respective facilities will interconnect.

#### Project Cost

The Estimated Project Cost is \$~~197.1~~210 million ~~plus an escalation compounded adjustment of 3 percent per year to account for inflation as measured from the bid submission date of February 27, 2015 and the Project In-Service Date.~~

Consistent with the proposal submitted by Transource on February 27, 2015, and with the settlement approved by FERC on January 28, 2018 in Docket No. ER17-419, Transource commits to the following terms and conditions relevant to the Project:

- (a) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity plus incentives on the costs incurred for the Project up to the Estimated Project Cost;

- (b) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity on the costs incurred for the Project above the Estimated Project Cost, but shall forego any return on equity incentives approved by FERC (including the RTO participation adder) for the project cost portion that exceeds the Estimated Project Cost; and
- (c) The Transource Subsidiaries commit to cap the equity component of the capital structure for the competitive elements of the Project at 50% beginning on the earliest of (a) the Project's in-service date, (b) the date non-construction debt (i.e., permanent financing) is put in place, or (c) June 1, 2020. ~~to an actual equity content of no greater than 50 percent for the Project, once permanent financing is in place. Transource shall be granted relief from this commitment if the capital market conditions do not remain normal and the Transource Subsidiaries do not have the ability to finance these transmission projects with the proposed capital structure.~~

# **ATTACHMENT B**

**Service Agreement No. 4579  
(Clean Tariff)**

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT**

**Between**

**PJM Interconnection, L.L.C.**

**And**

**Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC**

**(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT****Between****PJM Interconnection, L.L.C.****And****Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC****(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

This Designated Entity Agreement, including the Schedules attached hereto and incorporated herein (collectively, "Agreement") is made and entered into as of the Effective Date between PJM Interconnection, L.L.C. ("Transmission Provider" or "PJM"), and Transource Energy, LLC ("Designated Entity" or "Transource"), referred to herein individually as "Party" and collectively as "the Parties."

**WITNESSETH**

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

WHEREAS, pursuant to Section 1.5.8(i) of Schedule 6 of the Operating Agreement, the Transmission Provider notified Designated Entity that it was designated as the Designated Entity for the Project (described in Schedule A to this Agreement) to be included in the Regional Transmission Expansion Plan;

WHEREAS, pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity accepted the designation as the Designated Entity for the Project and therefore has the obligation to construct the Project; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

## **Article 1 – Definitions**

### **1.0 Defined Terms.**

All capitalized terms used in this Agreement shall have the meanings ascribed to them in Part I of the Tariff or in definitions either in the body of this Agreement or its attached Schedules. In the event of any conflict between defined terms set forth in the Tariff or defined terms in this Agreement, including the Schedules, such conflict will be resolved in favor of the terms as defined in this Agreement.

### **1.1 Confidential Information.**

Any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the Project or Transmission Owner facilities to which the Project will interconnect, which is designated as confidential by the party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, but may not be limited to, information relating to the producing party's technology, research and development, business affairs and pricing, land acquisition and vendor contracts relating to the Project.

### **1.2 Designated Entity Letter of Credit.**

Designated Entity Letter of Credit shall mean the letter of credit provided by the Designated Entity pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement as security associated with the Project.

### **1.3 Development Schedule.**

Development Schedule shall mean the schedule of milestones set forth in Schedule C of this Agreement.

### **1.4 Effective Date.**

Effective Date shall mean the date this Agreement becomes effective pursuant to Section 2.0 of this Agreement.

### **1.5 Initial Operation.**

Initial Operation shall mean the date the Project is (i) energized and (ii) under Transmission Provider operational dispatch.

### **1.6 Project.**

Project shall mean the enhancement or expansion included in the PJM Regional Transmission Expansion Plan described in Schedule A of this Agreement.

**1.7 Project Finance Entity.**

Project Finance Entity shall mean holder, trustee or agent for holders, of any component of Project Financing.

**1.8 Project Financing.**

Project Financing shall mean: (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Project, any alteration, expansion or improvement to the Project, or the operation of the Project; or (b) loans and/or debt issues secured by the Project.

**1.9 Reasonable Efforts.**

Reasonable Efforts shall mean such efforts as are consistent with ensuring the timely and effective design and construction of the Project in a manner, which ensures that the Project, once placed in service, meets the requirements of the Project as described in Schedule B and are consistent with Good Utility Practice.

**1.10 Required Project In-Service Date.**

Required Project In-Service Date shall mean the date the Project is required to: (i) be completed in accordance with the Scope of Work in Schedules B this Agreement, (ii) meet the criteria outlined in Schedule D of this Agreement and (iii) be under Transmission Provider operational dispatch.

**Article 2 – Effective Date and Term****2.0 Effective Date.**

Subject to regulatory acceptance, this Agreement shall become effective on the date the Agreement has been executed by all Parties, or if this Agreement is filed with FERC for acceptance, rather than reported only in PJM's Electric Quarterly Report, upon the date specified by FERC.

**2.1 Term.**

This Agreement shall continue in full force and effect from the Effective Date until: (i) the Designated Entity executes the Consolidated Transmission Owners Agreement; and (ii) the Project (a) has been completed in accordance with the terms and conditions of this Agreement, (b) meets all relevant required planning criteria, and (c) is under Transmission Provider's operational dispatch; or (iii) the Agreement is terminated pursuant to Article 8 of this Agreement.

## **Article 3 – Security**

### **3.0 Obligation to Provide Security.**

In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$5,550,000, which is three percent of the estimated cost of the Project. Designated Entity is required provide and maintain the Designated Entity Letter of Credit, as required by Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement. The Designated Entity Letter of Credit shall remain in full force and effect for the term of this Agreement and for the duration of the obligations arising therefrom in accordance with Article 17.0.

### **3.1 Distribution of Designated Entity Letter of Credit or Cash Security.**

In the event that Transmission Provider draws upon the Designated Entity Letter of Credit or retains the cash security in accordance with Sections 7.5, 8.0, or 8.1, Transmission Provider shall distribute such funds as determined by FERC.

## **Article 4 – Project Construction**

### **4.0 Construction of Project by Designated Entity.**

Designated Entity shall design, engineer, procure, install and construct the Project, including any modifications thereto, in accordance with: (i) the terms of this Agreement, including but not limited to the Scope of Work in Schedule B and the Development Schedule in Schedule C; (ii) applicable reliability principles, guidelines, and standards of the Applicable Regional Reliability Council and NERC; (iii) the Operating Agreement; (iv) the PJM Manuals; and (v) Good Utility Practice.

### **4.1 Milestones.**

#### **4.1.0 Milestone Dates.**

Designated Entity shall meet the milestone dates set forth in the Development Schedule in Schedule C of this Agreement. Milestone dates set forth in Schedule C only may be extended by Transmission Provider in writing. Failure to meet any of the milestone dates specified in Schedule C, or as extended as described in this Section 4.1.0 or Section 4.3.0 of this Agreement, shall constitute a Breach of this Agreement. Transmission Provider reasonably may extend any such milestone date, in the event of delays not caused by the Designated Entity that could not be remedied by the Designated Entity through the exercise of due diligence, or if an extension will not delay the Required Project In-Service Date specified in Schedule C of this Agreement; provided that a corporate officer of the Designated Entity submits a revised Development Schedule containing revised milestones and showing the Project in full operation no later than the Required Project In-Service Date specified in Schedule C of this Agreement.

#### **4.1.1 Right to Inspect.**

Upon reasonable notice, Transmission Provider shall have the right to inspect the Project for the purposes of assessing the progress of the Project and satisfaction of milestones. Such inspection shall not be deemed as review or approval by Transmission Provider of any design or construction practices or standards used by the Designated Entity.

#### **4.2 Applicable Technical Requirements and Standards.**

For the purposes of this Agreement, applicable technical requirements and standards of the Transmission Owner(s) to whose facilities the Project will interconnect shall apply to the design, engineering, procurement, construction and installation of the Project to the extent that the provisions thereof relate to the interconnection of the Project to the Transmission Owner(s) facilities.

#### **4.3 Project Modification.**

##### **4.3.0 Project Modification Process.**

The Scope of Work and Development Schedule, including the milestones therein, may be revised, as required, in accordance with Transmission Provider's project modification process set forth in the PJM Manuals, or otherwise by Transmission Provider in writing. Such modifications may include alterations as necessary and directed by Transmission Provider to meet the system condition for which the Project was included in the Regional Transmission Expansion Plan.

##### **4.3.1 Consent of Transmission Provider to Project Modifications.**

Designated Entity may not modify the Project without prior written consent of Transmission Provider, including but not limited to, modifications necessary to obtain siting approval or necessary permits, which consent shall not be unreasonably withheld, conditioned, or delayed.

##### **4.3.2 Customer Facility Interconnections And Transmission Service Requests.**

Designated Entity shall perform or permit the engineering and construction necessary to accommodate the interconnection of Customer Facilities to the Project and transmission service requests that are determined necessary for such interconnections and transmission service requests in accordance with Parts IV and VI, and Parts II and III, respectively, of the Tariff.

#### **4.4 Project Tracking.**

The Designated Entity shall provide regular, quarterly construction status reports in writing to Transmission Provider. The reports shall contain, but not be limited to, updates and information specified in the PJM Manuals regarding: (i) current engineering and construction status of the Project; (ii) Project completion percentage, including milestone completion; (iii) current target Project or phase completion date(s); (iv) applicable outage information; and (v) cost expenditures

to date and revised projected cost estimates for completion of the Project. Transmission Provider shall use such status reports to post updates regarding the progress of the Project.

#### **4.5 Exclusive Responsibility of Designated Entity.**

Designated Entity shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with applicable laws and regulations associated with the Project, including but not limited to obtaining all necessary permits, siting, and other regulatory approvals. Transmission Provider shall have no responsibility to manage, supervise, or ensure compliance or adequacy of same.

### **Article 5 – Coordination with Third-Parties**

#### **5.0 Interconnection Coordination Agreement with Transmission Owner(s).**

By the dates specified in the Development Schedule in Schedule C of this Agreement, Designated Entity shall execute or request to file unexecuted with the Commission: (a) an Interconnection Coordination Agreement; and (b) an interconnection agreement among and between Designated Entity, Transmission Provider, and the Transmission Owner(s) to whose facilities the Project will interconnect.

#### **5.1 Connection with Entities Not a Party to the Consolidated Transmission Owners Agreement.**

Designated Entity shall not permit any part of the Project facilities to be connected with the facilities of any entity which is not: (i) a party to Consolidated Transmission Owners Agreement without an interconnection agreement that contains provisions for the safe and reliable interconnection and operation of such interconnection in accordance with Good Utility Practice, and principles, guidelines and standards of the Applicable Regional Reliability Council and NERC or comparable requirements of an applicable retail tariff or agreement approved by appropriate regulatory authority; or (ii) a party to a separate Designated Entity Agreement.

### **Article 6 – Insurance**

#### **6.0 Designated Entity Insurance Requirements.**

Designated Entity shall obtain and maintain in full force and effect such insurance as is consistent with Good Utility Practice. The Transmission Provider shall be included as an Additional Insured in the Designated Entity's applicable liability insurance policies. The Designated Entity shall provide evidence of compliance with this requirement upon request by the Transmission Provider.

## **6.1 Subcontractor Insurance.**

In accord with Good Utility Practice, Designated Entity shall require each of its subcontractors to maintain and, upon request, provide Designated Entity evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding and hiring of contractors or subcontractors shall be the Designated Entity's discretion, but regardless of bonding or the existence or non-existence of insurance, the Designated Entity shall be responsible for the performance or non-performance of any contractor or subcontractor it hires.

## **Article 7 – Breach and Default**

### **7.0 Breach.**

Except as otherwise provided in Article 10, a Breach of this Agreement shall include:

(a) The failure to comply with any term or condition of this Agreement, including but not limited to, any Breach of a representation, warranty, or covenant made in this Agreement, and failure to provide and maintain security in accordance with Section 3.0 of this Agreement;

(b) The failure to meet a milestone or milestone date set forth in the Development Schedule in Schedule C of this Agreement, or as extended in writing as described in Sections 4.1.0 and 4.3.0 of this Agreement;

(c) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or

(d) Failure of any Party to provide information or data required to be provided to another Party under this Agreement for such other Party to satisfy its obligations under this Agreement.

### **7.1 Notice of Breach.**

In the event of a Breach, a Party not in Breach of this Agreement shall give written notice of such Breach to the breaching Party, and to any other persons, including a Project Finance Entity, if applicable, that the breaching Party identifies in writing prior to the Breach. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

### **7.2 Cure and Default.**

A Party that commits a Breach and does not take steps to cure the Breach pursuant to Section 7.3 shall be in Default of this Agreement.

### **7.3 Cure of Breach.**

The breaching Party may: (i) cure the Breach within thirty days from the receipt of the notice of Breach or other such date as determined by Transmission Provider to ensure that the Project meets its Required Project In-Service Date set forth in Schedule C; or, (ii) if the Breach cannot be cured within thirty days but may be cured in a manner that ensures that the Project meets the Required Project In-Service Date for the Project, within such thirty day time period, commences in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion.

### **7.4 Re-evaluation if Breach Not Cured.**

In the event that a breaching Party does not cure a Breach in accordance with Section 7.3 of this Agreement, Transmission Provider shall conduct a re-evaluation pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement. If based on such re-evaluation, the Project is retained in the Regional Transmission Expansion Plan and the Designated Entity's designation for the Project also is retained, the Parties shall modify this Agreement, including Schedules, as necessary. In all other events, Designated Entity shall be considered in Default of this Agreement, and this Agreement shall terminate in accordance with Section 8.1 of this Agreement.

### **7.5 Remedies.**

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have in equity or at law. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit. Nothing in this Section 7.5 is intended in any way to affect the rights of a third-party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity's Default of this Agreement.

### **7.6 Remedies Cumulative.**

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

### **7.7 Waiver.**

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or other matter.

## **Article 8 – Early Termination**

### **8.0 Termination by Transmission Provider.**

In the event that: (i) pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement, Transmission Provider determines to remove the Project from the Regional Transmission Expansion Plan and/or not to retain Designated Entity's status for the Project; (ii) Transmission Provider otherwise determines pursuant to Regional Transmission Expansion Planning Protocol in Schedule 6 of the Operating Agreement that the Project is no longer required to address the specific need for which the Project was included in the Regional Transmission Expansion Plan; or (iii) an event of force majeure, as defined in section 10.0 of this Attachment KK, or other event outside of the Designated Entity's control that, with the exercise of Reasonable Efforts, Designated Entity cannot alleviate and which prevents the Designated Entity from satisfying its obligations under this Agreement, Transmission Provider may terminate this Agreement by providing written notice of termination to Designated Entity, which shall become effective the later of sixty calendar days after the Designated Entity receives such notice or other such date the FERC establishes for the termination. In the event termination pursuant to this Section 8.0 is based on (ii) or (iii) above, Transmission Provider shall not have the right to draw upon the Designated Entity Letter of Credit or retain the cash security and shall cancel the Designated Entity Letter of Credit or return the cash security within thirty days of the termination of this Agreement.

### **8.1 Termination by Default.**

This Agreement shall terminate in the event a Party is in Default of this Agreement in accordance with Sections 7.2 or 7.4 of this Agreement. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit or retain the cash security.

### **8.2 Filing at FERC.**

Transmission Provider shall make the appropriate filing with FERC as required to effectuate the termination of this Agreement pursuant to this Article 8.

## **Article 9 – Liability and Indemnity**

### **9.0 Liability.**

For the purposes of this Agreement, Transmission Provider's liability to the Designated Entity, any third-party, or any other person arising or resulting from any acts or omissions associated in any way with performance under this Agreement shall be limited in the same manner and to the same extent that Transmission Provider's liability is limited to any Transmission Customer, third-party or other person under Section 10.2 of the Tariff arising or resulting from any act or omission in any way associated with service provided under the Tariff or any Service Agreement thereunder.

## **9.1 Indemnity.**

For the purposes of this Agreement, Designated Entity shall at all times indemnify, defend, and save Transmission Provider and its directors, managers, members, shareholders, officers and employees 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 the Transmission Provider's acts or omissions associated with the performance of its obligations under this Agreement to the same extent and in the same manner that a Transmission Customer is required to indemnify, defend and save Transmission Provider and its directors, managers, members, shareholders, officers and employees harmless under Section 10.3 of the Tariff.

## **Article 10 – Force Majeure**

### **10.0 Force Majeure.**

For the purpose of this section, an event of force majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightening, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which in any foregoing cases, by exercise of due diligence, it has been unable to overcome. An event of force majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remedial causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

### **10.1 Notice.**

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing within a reasonable time after the occurrence of the cause relied on.

### **10.2 Duration of Force Majeure.**

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any deficiency or failure to perform any obligation under this Agreement to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice thereof to the other Party. In the event that Designated Entity is unable to perform any of its

obligations under this Agreement because of an occurrence of Force Majeure, Transmission Provider may terminate this Agreement in accordance with Section 8.0 of this Agreement.

### **10.3 Breach or Default of or Force Majeure under Interconnection Coordination Agreement**

If either of the following events prevents Designated Entity from performing any of its obligations under this Agreement, such event shall be considered a Force Majeure event under this Agreement and the provisions of this Article 10 shall apply: (i) a breach or default of the Interconnection Coordination Agreement associated with the Project by a party to the Interconnection Coordination Agreement other than the Designated Entity; or (ii) an event of Force Majeure under the Interconnection Coordination Agreement associated with the Project.

## **Article 11 – Assignment**

### **11.0 Assignment.**

A Party may assign all of its rights, duties, and obligations under this Agreement in accordance with this Section 11.0. Except for assignments described in Section 11.1 of this Agreement that may not result in the assignment of all rights, duties, and obligations under this Agreement to a Project Finance Entity, no partial assignments will be permitted. No Party may assign any of its rights or delegate any of its duties or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Assignment by the Designated Entity shall be contingent upon, prior to the effective date of the assignment: (i) the Designated Entity or assignee demonstrating to the satisfaction of Transmission Provider that the assignee has the technical competence and financial ability to comply with the requirements of this Agreement and to construct the Project consistent with the assignor's cost estimates for the Project; and (ii) the assignee is eligible to be a Designated Entity for the Project pursuant to Sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement. Except as provided in an assignment to a Finance Project Entity to the contrary, for all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement. Any assignment described herein shall not relieve or discharge the assignor from any of its obligations hereunder absent the written consent of the other Party. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the terms of this Agreement, the Tariff and the Operating Agreement.

## **11.1 Project Finance Entity Assignments**

### **11.1.1 Assignment to Project Finance Entity**

If an arrangement between the Designated Entity and a Project Finance Entity provides that the Project Finance Entity may assume any of the rights, duties and obligations of the Designated Entity under this Agreement or otherwise provides that the Project Finance Entity may cure a Breach of this Agreement by the Designated Entity, the Project Finance Entity may be assigned this Agreement or any of the rights, duties, or obligations hereunder only upon written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement.

### **11.1.2 Assignment By Project Finance Entity**

A Project Finance Entity that has been assigned this Agreement or any of the rights, duties or obligations under this Agreement or otherwise is permitted to cure a Breach of this Agreement, as described pursuant to Section 11.1.1 above, may assign this Agreement or any of the rights, duties or obligations under this Agreement to another entity not a Party to this Agreement only: (i) upon the Breach of this Agreement by the Designated Entity; and (ii) with the written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement alter or diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the Tariff and Operating Agreement.

## **Article 12 – Information Exchange**

### **12.0 Information Access.**

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out each Party's obligations and responsibilities under this Agreement, the Operating Agreement, and the Tariff. Such information shall include but not be limited to, information reasonably requested by Transmission Provider to prepare the Regional Transmission Expansion Plan. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement, the Operating Agreement, and the Tariff.

### **12.1 Reporting of Non-Force Majeure Events.**

Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply,

including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section 12.1 shall not entitle the receiving Party to allege a cause of action for anticipatory Breach of this Agreement.

### **Article 13 – Confidentiality**

#### **13.0 Confidentiality.**

For the purposes of this Agreement, information will be considered and treated as Confidential Information only if it meets the definition of Confidential Information set forth in Section 1.1 of this Agreement and is clearly designated or marked in writing as “confidential” on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is “confidential.” Confidential Information shall be treated consistent with Section 18.17 of the Operating Agreement. A Party shall be responsible for the costs associated with affording confidential treatment to its information.

### **Article 14 – Regulatory Requirements**

#### **14.0 Regulatory Approvals.**

Designated Entity shall seek and obtain all required government authority authorizations or approvals as soon as reasonably practicable, and by the milestone dates set forth in the Development Schedule of Schedule C of this Agreement, as applicable.

### **Article 15 – Representations and Warranties**

#### **15.0 General.**

Designated Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Designated Entity during the full time this Agreement is effective:

##### **15.0.1 Good Standing**

Designated Entity is duly organized or formed, as applicable, validly existing and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated.

### **15.0.2 Authority**

Designated Entity has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of Designated Entity, enforceable against Designated Entity in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

### **15.0.3 No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of Designated Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon Designated Entity or any of its assets.

## **Article 16 – Operation of Project**

### **16.0 Initial Operation.**

The following requirements shall be satisfied prior to Initial Operation of the Project:

#### **16.0.1 Execution of the Consolidated Transmission Owners Agreement**

Designated Entity has executed the Consolidated Transmission Owners Agreement and is able to meet all requirements therein.

#### **16.0.2 Execution of an Interconnection Agreement**

Designated Entity has executed an Interconnection Agreement with the Transmission Owner(s) to whose facilities the Project will interconnect, or such agreement has been filed unexecuted with the Commission.

#### **16.0.3 Operational Requirements**

The Project must meet all applicable operational requirements described in the PJM Manuals.

#### **16.0.4 Parallel Operation**

Designated Entity shall have all necessary systems and personnel in place to allow for parallel operation of its facilities with the facilities of the Transmission Owner(s) to which the Project is interconnected consistent with the Interconnection Coordination Agreement associated with the Project.

### **16.0.5 Synchronization**

Designated Entity shall have received any necessary authorization from Transmission Provider and the Transmission Owner(s) to whose facilities the Project will interconnect to synchronize with the Transmission System or to energize, as applicable, per the determination of Transmission Provider, the Project.

### **16.1 Partial Operation.**

If the Project is to be completed in phases, the completed part of the Project may operate prior to completion and Required Project In-Service Date set forth in Schedule C of this Agreement, provided that: (i) Designated Entity has notified Transmission Provider of the successful completion of the Project phase; (ii) Transmission Provider has determined that partial operation of the Project will not negatively impact the reliability of the Transmission System; (iii) Designated Entity has demonstrated that the requirements for Initial Operation set forth in Section 16.0 of this Agreement have been met for the Project phase; and (iv) partial operation of the Project is consistent with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice.

## **Article 17 – Survival**

### **17.0 Survival of Rights.**

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The Liability and Indemnity provisions in Article 9 also shall survive termination, expiration, or cancellation of this Agreement.

## **Article 18 – Non-Standard Terms and Conditions**

### **18.0 Schedule E – Addendum of Non-Standard Terms and Conditions.**

Subject to FERC acceptance or approval, the Parties agree that the terms and conditions set forth in the attached Schedule E are hereby incorporated by reference, and made a part of, this Agreement. In the event of any conflict between a provision of Schedule E that FERC has accepted and any provision of the standard terms and conditions set forth in this Agreement that relates to the same subject matter, the pertinent provision of Schedule E shall control.

## Article 19 – Miscellaneous

### 19.0 Notices.

Any notice or request made to or by any Party regarding this Agreement shall be made by U.S. mail or reputable overnight courier to the addresses set forth below:

Transmission Provider:  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
Attention: Manager, Infrastructure Coordination

Designated Entity:  
Transource Energy, LLC  
1 Riverside Plaza,  
Columbus, Ohio 43215-2372  
Attention: Antonio Smyth

### 19.1 No Transmission Service.

This Agreement does not entitle the Designated Entity to take Transmission Service under the Tariff.

### 19.2 No Rights.

Neither this Agreement nor the construction or the financing of the Project entitles Designated Entity to any rights related to Customer-Funded Upgrades set forth in Subpart C of Part VI of the Tariff.

### 19.3 Standard of Review.

Future modifications to this Agreement by the Parties or the FERC shall be subject to the just and reasonable standard and the Parties shall not be required to demonstrate that such modifications are required to meet the “public interest” standard of review as described in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

### 19.4 No Partnership.

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

**19.5 Headings.**

The Article and Section headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

**19.6 Interpretation.**

Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

**19.7 Severability.**

Each provision of this Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

**19.8 Further Assurances.**

Each Party hereby agrees that it shall hereafter execute and deliver such further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

**19.9 Counterparts.**

This Agreement may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

**19.10 Governing Law**

This Agreement shall be governed under the Federal Power Act and Delaware law, as applicable.

**19.11 Incorporation of Other Documents.**

The Tariff, the Operating Agreement, and the Reliability Assurance Agreement, as they may be amended from time to time, are hereby incorporated herein and made a part hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

**Transmission Provider: PJM Interconnection, L.L.C.**

By: /s/ Suzanne E. Glatz                      Manager, Infrastructure Coordination 11/2/2016  
Name    Title    Date

Printed name of signer: Suzanne E. Glatz

**Designated Entity: Transource Energy, LLC for itself and on behalf of Transource Maryland, LLC and Transource Pennsylvania, LLC**

By: /s/ Antonio P. Smith                      President                                      10-26-16  
Name    Title    Date

Printed name of signer: Antonio P. Smith

## SCHEDULE A

### Description of Project

#### Rice – Ringgold Line (b2743.5):

- Build new 230 kV double circuit overhead transmission line between the existing Ringgold Substation and the new Rice Substation; operated as a single circuit.

#### Rice Substation (b2743.1):

- Tap the existing Conemaugh - Hunterstown 500 kV line to tie in the new 500/230kV Rice Substation connecting to the new Rice - Ringgold 230 kV line.
- Install two 500/230 kV transformers, operated in parallel.

#### Furnace Run – Conastone Line (b2752.5):

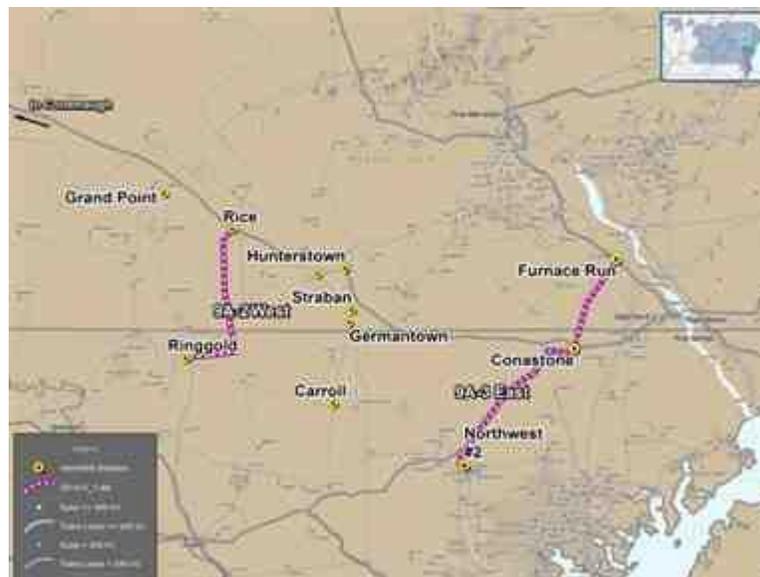
- Build new 230 kV double circuit overhead transmission line between the existing Conastone Substation and the new Furnace Run Substation; operated as a single circuit.

#### Furnace Run Substation (b2752.1):

- Tap the existing Peach Bottom - Three Mile Island 500 kV line to tie in the new 500/230kV Furnace Run Substation connecting to the new Furnace Run - Conastone 230 kV line.
- Install two 500/230 kV transformers, operated in parallel.

*Note:* Work required to rebuild the Conastone - Northwest 230 kV line will be covered under a separate RTEP project. The work required to replace the Ringgold #3 and #4 230/138 kV transformers, to reconfigure the Ringgold bus, and to rebuild & reconductor the Ringgold - Catoclin 138 kV & replace terminal equipment at both ends of the circuit will also be covered under a separate RTEP project.

#### *Project Area Map:*



## **SCHEDULE B**

### **Scope of Work**

The new Rice – Ringgold Line will include approximately 27 miles of double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1660 MVA summer normal and summer emergency, between the existing Ringgold Substation and the new Rice Substation.

The new Rice Substation will tie into the existing Hunterstown – Conemaugh 500 kV line. The transmission line and substation remote-end work required to tie the existing Hunterstown – Conemaugh 500 kV line into the new Rice Substation will be performed by others, and not by Transource. The new Rice Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- One 245 kV breaker in a single bus single breaker configuration.
- Three 500 kV breakers in a ring bus configuration.

The new Furnace Run – Conastone Line will include approximately 15 miles of new double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1800 MVA summer normal and 2400 MVA summer emergency, between the existing Conastone Substation and the new Furnace Run Substation.

The new Furnace Run Substation will tie into the existing Three Mile Island – Peach Bottom 500 kV line. The transmission line and substation remote-end work required to tie the existing Three Mile Island – Peach Bottom 500 kV line into the new Furnace Run Substation will be performed by others, and not by Transource. The new Furnace Run Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- Two 245 kV breakers in a double breaker single bus configuration.
- Four 500 kV breakers in a ring bus configuration.

## SCHEDULE C

### Development Schedule

Designated Entity shall ensure and demonstrate to the Transmission Provider that it timely has met the following milestones and milestone dates and that the milestones remain in good standing:

<b>Milestones and Milestone Dates</b>
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with PECO or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Metropolitan Edison Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Baltimore Gas and Electric Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Pennsylvania Electric Company or request the agreement be filed unexecuted.
<b>Demonstrate adequate Project financing.</b> On or before <u>December 31, 2016</u> , Designated Entity must demonstrate that adequate project financing has been secured. Project financing must be maintained for the term of this Agreement.
<b>Submit application for any required certificate of convenience and necessity.</b> On or before <u>June 1, 2018</u> , Designated Entity must demonstrate that any applications for any required state or local certificate(s) of convenience and necessity have been submitted or such certificates have been ruled as not required by the applicable states or local governmental authorities.
<b>Acquisition of all necessary federal, state, county, and local site permits.</b> On or before <u>December 1, 2019</u> , Designated Entity must demonstrate that all required federal, state, county and local site permits have been acquired.
<b>Delivery of major electrical equipment.</b> On or before <u>December 1, 2019</u> , Designated Entity must demonstrate that all major electrical equipment has been delivered to the project site.

**Substantial Site Work Completed:** On or before January 31, 2020, Designated Entity must demonstrate that at least 20% of Project site construction is completed. Additionally the Designated Entity must submit updated ratings and the final project drawings to the Transmission Provider.

**Demonstrate required ratings.** On or before May 1, 2020, Designated Entity must demonstrate that the project meets all required electrical ratings.

**Required Project In-Service Date.** On or before June 1, 2020, Designated Entity must: (i) demonstrate that the Project is completed in accordance with the Scope of Work in Schedules B of this Agreement; (ii) meets the criteria outlined in Schedule D of this Agreement; and (iii) is under Transmission Provider operational dispatch.

## SCHEDULE D

### PJM Planning Requirements and Criteria and Required Ratings

#### Required Ratings\*

##### Rice – Ringgold Line (b2743.5):

- 1660 / 1660 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - $R = 0.0025299$  pu
    - $X = 0.0275589$  pu
    - $B = 0.114035$  pu

##### Rice Substation (b2743.1):

- Two 900 MVA 500/230 kV transformers

##### Furnace Run – Conastone Line (b2752.5):

- 1800 / 2400 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - $R = 0.00134928$  pu
    - $X = 0.0146981$  pu
    - $B = 0.0608184$  pu

##### Furnace Run Substation (b2752.1):

- Two 900 MVA 500/230 kV transformers

\* These parameters may be updated and are subject to evaluation by PJM.

## SCHEDULE E

### Non-Standard Terms and Conditions

#### Project Development

The Parties acknowledge and agree that Transource Energy, LLC may utilize its wholly owned subsidiaries, Transource Pennsylvania, LLC and Transource Maryland, LLC (the “Transource Subsidiaries”), to perform its obligations to design, engineer, procure, install, and construct the Project.

Transource Pennsylvania, LLC shall design, engineer, procure, install, construct, own, operate and maintain the portion of the Project to be located in the Commonwealth of Pennsylvania, and Transource Maryland, LLC shall design, engineer, procure, install, construct, own, operate, and maintain the portion of the Project to be located in the State of Maryland. Transource Energy, LLC shall provide the overall coordination for the Project work.

The Transource Subsidiaries shall obtain all necessary permits, siting, and other regulatory approvals to undertake their respective portions of the Project and shall perform their work in accordance with the terms of this Designated Entity Agreement.

In accordance with Sections 5.0, 16.0.1, and 16.0.2, of this Designated Entity Agreement:

- (a) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Consolidated Transmission Owners Agreement;
- (b) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Interconnection Coordination Agreement for the Project; and
- (c) The Transource Subsidiaries each shall execute interconnection agreements with Transmission Owners with whom their respective facilities will interconnect.

#### Project Cost

The Estimated Project Cost is \$210 million.

Consistent with the proposal submitted by Transource on February 27, 2015, and with the settlement approved by FERC on January 28, 2018 in Docket No. ER17-419, Transource commits to the following terms and conditions relevant to the Project:

- (a) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity plus incentives on the costs incurred for the Project up to the Estimated Project Cost;

- (b) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity on the costs incurred for the Project above the Estimated Project Cost, but shall forego any return on equity incentives approved by FERC (including the RTO participation adder) for the project cost portion that exceeds the Estimated Project Cost; and
- (c) The Transource Subsidiaries commit to cap the equity component of the capital structure for the competitive elements of the Project at 50% beginning on the earliest of (a) the Project's in-service date, (b) the date non-construction debt (i.e., permanent financing) is put in place, or (c) June 1, 2020.

FERC rendition of the electronically filed tariff records in Docket No. ER17-00349-002

Filing Data:

CID: C000030

Filing Title: Compliance filing per the Commission's 11/1/2018 order re: DEA, SA No. 4579

Company Filing Identifier: 4245

Type of Filing Code: 80

Associated Filing Identifier: 2429

Tariff Title: PJM Service Agreements Tariff

Tariff ID: 40

Payment Confirmation:

Suspension Motion:

Tariff Record Data:

Record Content Description, Tariff Record Title, Record Version Number, Option Code:

PJM SA No. 4579, PJM SA No. 4579 between PJM and Transource Energy, 0.1.0, A

Record Narrative Name: Executed Designated Entity Agreement No. 4579 between PJM and Transource Energy, LLC

Tariff Record ID: 1446

Tariff Record Collation Value: 561624990 Tariff Record Parent Identifier: 0

Proposed Date: 2016-11-02

Priority Order: 600

Record Change Type: CHANGE

Record Content Type: 1

Associated Filing Identifier:

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT**

**Between**

**PJM Interconnection, L.L.C.**

**And**

**Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC**

**(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

Service Agreement No. 4579

**DESIGNATED ENTITY AGREEMENT**

**Between**

**PJM Interconnection, L.L.C.**

**And**

**Transource Energy, LLC, for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC**

**(PJM Upgrade Project b2743, b2752 Rice - Ringgold and Furnace Run - Conastone)**

This Designated Entity Agreement, including the Schedules attached hereto and incorporated herein (collectively, "Agreement") is made and entered into as of the Effective Date between PJM Interconnection, L.L.C. ("Transmission Provider" or "PJM"), and Transource Energy, LLC ("Designated Entity" or "Transource"), referred to herein individually as "Party" and collectively as "the Parties."

**WITNESSETH**

WHEREAS, in accordance with FERC Order No. 1000 and Schedule 6 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. ("Operating Agreement"), Transmission Provider is required to designate among candidates, pursuant to a FERC-approved process, an entity to develop and construct a specified project to expand, replace and/or reinforce the Transmission System operated by Transmission Provider;

WHEREAS, pursuant to Section 1.5.8(i) of Schedule 6 of the Operating Agreement, the Transmission Provider notified Designated Entity that it was designated as the Designated Entity for the Project (described in Schedule A to this Agreement) to be included in the Regional Transmission Expansion Plan;

WHEREAS, pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity accepted the designation as the Designated Entity for the Project and therefore has the obligation to construct the Project; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, the receipt and sufficiency is hereby mutually acknowledged by each Party, the Parties mutually covenant and agree as follows:

## **Article 1 – Definitions**

### **1.0 Defined Terms.**

All capitalized terms used in this Agreement shall have the meanings ascribed to them in Part I of the Tariff or in definitions either in the body of this Agreement or its attached Schedules. In the event of any conflict between defined terms set forth in the Tariff or defined terms in this Agreement, including the Schedules, such conflict will be resolved in favor of the terms as defined in this Agreement.

### **1.1 Confidential Information.**

Any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the Project or Transmission Owner facilities to which the Project will interconnect, which is designated as confidential by the party supplying the information, whether conveyed verbally, electronically, in writing, through inspection, or otherwise, and shall include, but may not be limited to, information relating to the producing party's technology, research and development, business affairs and pricing, land acquisition and vendor contracts relating to the Project.

### **1.2 Designated Entity Letter of Credit.**

Designated Entity Letter of Credit shall mean the letter of credit provided by the Designated Entity pursuant to Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement as security associated with the Project.

### **1.3 Development Schedule.**

Development Schedule shall mean the schedule of milestones set forth in Schedule C of this Agreement.

### **1.4 Effective Date.**

Effective Date shall mean the date this Agreement becomes effective pursuant to Section 2.0 of this Agreement.

### **1.5 Initial Operation.**

Initial Operation shall mean the date the Project is (i) energized and (ii) under Transmission Provider operational dispatch.

### **1.6 Project.**

Project shall mean the enhancement or expansion included in the PJM Regional Transmission Expansion Plan described in Schedule A of this Agreement.

### **1.7 Project Finance Entity.**

Project Finance Entity shall mean holder, trustee or agent for holders, of any component of Project Financing.

### **1.8 Project Financing.**

Project Financing shall mean: (a) one or more loans, leases, equity and/or debt financings, together with all modifications, renewals, supplements, substitutions and replacements thereof, the proceeds of which are used to finance or refinance the costs of the Project, any alteration, expansion or improvement to the Project, or the operation of the Project; or (b) loans and/or debt issues secured by the Project.

### **1.9 Reasonable Efforts.**

Reasonable Efforts shall mean such efforts as are consistent with ensuring the timely and effective design and construction of the Project in a manner, which ensures that the Project, once placed in service, meets the requirements of the Project as described in Schedule B and are consistent with Good Utility Practice.

### **1.10 Required Project In-Service Date.**

Required Project In-Service Date shall mean the date the Project is required to: (i) be completed in accordance with the Scope of Work in Schedules B this Agreement, (ii) meet the criteria outlined in Schedule D of this Agreement and (iii) be under Transmission Provider operational dispatch.

## **Article 2 – Effective Date and Term**

### **2.0 Effective Date.**

Subject to regulatory acceptance, this Agreement shall become effective on the date the Agreement has been executed by all Parties, or if this Agreement is filed with FERC for acceptance, rather than reported only in PJM's Electric Quarterly Report, upon the date specified by FERC.

### **2.1 Term.**

This Agreement shall continue in full force and effect from the Effective Date until: (i) the Designated Entity executes the Consolidated Transmission Owners Agreement; and (ii) the Project (a) has been completed in accordance with the terms and conditions of this Agreement, (b) meets all relevant required planning criteria, and (c) is under Transmission Provider's operational dispatch; or (iii) the Agreement is terminated pursuant to Article 8 of this

Agreement.

### **Article 3 – Security**

#### **3.0 Obligation to Provide Security.**

In accordance with Section 1.5.8(j) of Schedule 6 of the Operating Agreement, Designated Entity shall provide Transmission Provider a letter of credit as acceptable to Transmission Provider (Designated Entity Letter of Credit) or cash security in the amount of \$5,550,000, which is three percent of the estimated cost of the Project. Designated Entity is required provide and maintain the Designated Entity Letter of Credit, as required by Section 1.5.8(j) of Schedule 6 of the Operating Agreement and Section 3.0 of this Agreement. The Designated Entity Letter of Credit shall remain in full force and effect for the term of this Agreement and for the duration of the obligations arising therefrom in accordance with Article 17.0.

#### **3.1 Distribution of Designated Entity Letter of Credit or Cash Security.**

In the event that Transmission Provider draws upon the Designated Entity Letter of Credit or retains the cash security in accordance with Sections 7.5, 8.0, or 8.1, Transmission Provider shall distribute such funds as determined by FERC.

### **Article 4 – Project Construction**

#### **4.0 Construction of Project by Designated Entity.**

Designated Entity shall design, engineer, procure, install and construct the Project, including any modifications thereto, in accordance with: (i) the terms of this Agreement, including but not limited to the Scope of Work in Schedule B and the Development Schedule in Schedule C; (ii) applicable reliability principles, guidelines, and standards of the Applicable Regional Reliability Council and NERC; (iii) the Operating Agreement; (iv) the PJM Manuals; and (v) Good Utility Practice.

#### **4.1 Milestones.**

##### **4.1.0 Milestone Dates.**

Designated Entity shall meet the milestone dates set forth in the Development Schedule in Schedule C of this Agreement. Milestone dates set forth in Schedule C only may be extended by Transmission Provider in writing. Failure to meet any of the milestone dates specified in Schedule C, or as extended as described in this Section 4.1.0 or Section 4.3.0 of this Agreement, shall constitute a Breach of this Agreement. Transmission Provider reasonably may extend any such milestone date, in the event of delays not caused by the Designated Entity that could not be remedied by the Designated Entity through the exercise of due diligence, or if an extension will not delay the Required Project In-Service Date specified in Schedule C of this Agreement; provided that a corporate officer of the Designated Entity submits a revised Development Schedule containing revised milestones and showing the Project in full operation no later than

the Required Project In-Service Date specified in Schedule C of this Agreement.

#### **4.1.1 Right to Inspect.**

Upon reasonable notice, Transmission Provider shall have the right to inspect the Project for the purposes of assessing the progress of the Project and satisfaction of milestones. Such inspection shall not be deemed as review or approval by Transmission Provider of any design or construction practices or standards used by the Designated Entity.

#### **4.2 Applicable Technical Requirements and Standards.**

For the purposes of this Agreement, applicable technical requirements and standards of the Transmission Owner(s) to whose facilities the Project will interconnect shall apply to the design, engineering, procurement, construction and installation of the Project to the extent that the provisions thereof relate to the interconnection of the Project to the Transmission Owner(s) facilities.

#### **4.3 Project Modification.**

##### **4.3.0 Project Modification Process.**

The Scope of Work and Development Schedule, including the milestones therein, may be revised, as required, in accordance with Transmission Provider's project modification process set forth in the PJM Manuals, or otherwise by Transmission Provider in writing. Such modifications may include alterations as necessary and directed by Transmission Provider to meet the system condition for which the Project was included in the Regional Transmission Expansion Plan.

##### **4.3.1 Consent of Transmission Provider to Project Modifications.**

Designated Entity may not modify the Project without prior written consent of Transmission Provider, including but not limited to, modifications necessary to obtain siting approval or necessary permits, which consent shall not be unreasonably withheld, conditioned, or delayed.

##### **4.3.2 Customer Facility Interconnections And Transmission Service Requests.**

Designated Entity shall perform or permit the engineering and construction necessary to accommodate the interconnection of Customer Facilities to the Project and transmission service requests that are determined necessary for such interconnections and transmission service requests in accordance with Parts IV and VI, and Parts II and III, respectively, of the Tariff.

#### **4.4 Project Tracking.**

The Designated Entity shall provide regular, quarterly construction status reports in writing to Transmission Provider. The reports shall contain, but not be limited to, updates and information specified in the PJM Manuals regarding: (i) current engineering and construction status of the Project; (ii) Project completion percentage, including milestone completion; (iii) current target

Project or phase completion date(s); (iv) applicable outage information; and (v) cost expenditures to date and revised projected cost estimates for completion of the Project. Transmission Provider shall use such status reports to post updates regarding the progress of the Project.

#### **4.5 Exclusive Responsibility of Designated Entity.**

Designated Entity shall be solely responsible for all planning, design, engineering, procurement, construction, installation, management, operations, safety, and compliance with applicable laws and regulations associated with the Project, including but not limited to obtaining all necessary permits, siting, and other regulatory approvals. Transmission Provider shall have no responsibility to manage, supervise, or ensure compliance or adequacy of same.

### **Article 5 – Coordination with Third-Parties**

#### **5.0 Interconnection Coordination Agreement with Transmission Owner(s).**

By the dates specified in the Development Schedule in Schedule C of this Agreement, Designated Entity shall execute or request to file unexecuted with the Commission: (a) an Interconnection Coordination Agreement; and (b) an interconnection agreement among and between Designated Entity, Transmission Provider, and the Transmission Owner(s) to whose facilities the Project will interconnect.

#### **5.1 Connection with Entities Not a Party to the Consolidated Transmission Owners Agreement.**

Designated Entity shall not permit any part of the Project facilities to be connected with the facilities of any entity which is not: (i) a party to Consolidated Transmission Owners Agreement without an interconnection agreement that contains provisions for the safe and reliable interconnection and operation of such interconnection in accordance with Good Utility Practice, and principles, guidelines and standards of the Applicable Regional Reliability Council and NERC or comparable requirements of an applicable retail tariff or agreement approved by appropriate regulatory authority; or (ii) a party to a separate Designated Entity Agreement.

### **Article 6 – Insurance**

#### **6.0 Designated Entity Insurance Requirements.**

Designated Entity shall obtain and maintain in full force and effect such insurance as is consistent with Good Utility Practice. The Transmission Provider shall be included as an Additional Insured in the Designated Entity's applicable liability insurance policies. The Designated Entity shall provide evidence of compliance with this requirement upon request by the Transmission Provider.

## **6.1 Subcontractor Insurance.**

In accord with Good Utility Practice, Designated Entity shall require each of its subcontractors to maintain and, upon request, provide Designated Entity evidence of insurance coverage of types, and in amounts, commensurate with the risks associated with the services provided by the subcontractor. Bonding and hiring of contractors or subcontractors shall be the Designated Entity's discretion, but regardless of bonding or the existence or non-existence of insurance, the Designated Entity shall be responsible for the performance or non-performance of any contractor or subcontractor it hires.

## **Article 7 – Breach and Default**

### **7.0 Breach.**

Except as otherwise provided in Article 10, a Breach of this Agreement shall include:

(a) The failure to comply with any term or condition of this Agreement, including but not limited to, any Breach of a representation, warranty, or covenant made in this Agreement, and failure to provide and maintain security in accordance with Section 3.0 of this Agreement;

(b) The failure to meet a milestone or milestone date set forth in the Development Schedule in Schedule C of this Agreement, or as extended in writing as described in Sections 4.1.0 and 4.3.0 of this Agreement;

(c) Assignment of this Agreement in a manner inconsistent with the terms of this Agreement; or

(d) Failure of any Party to provide information or data required to be provided to another Party under this Agreement for such other Party to satisfy its obligations under this Agreement.

### **7.1 Notice of Breach.**

In the event of a Breach, a Party not in Breach of this Agreement shall give written notice of such Breach to the breaching Party, and to any other persons, including a Project Finance Entity, if applicable, that the breaching Party identifies in writing prior to the Breach. Such notice shall set forth, in reasonable detail, the nature of the Breach, and where known and applicable, the steps necessary to cure such Breach.

### **7.2 Cure and Default.**

A Party that commits a Breach and does not take steps to cure the Breach pursuant to Section 7.3 shall be in Default of this Agreement.

### **7.3 Cure of Breach.**

The breaching Party may: (i) cure the Breach within thirty days from the receipt of the notice of Breach or other such date as determined by Transmission Provider to ensure that the Project meets its Required Project In-Service Date set forth in Schedule C; or, (ii) if the Breach cannot be cured within thirty days but may be cured in a manner that ensures that the Project meets the Required Project In-Service Date for the Project, within such thirty day time period, commences in good faith steps that are reasonable and appropriate to cure the Breach and thereafter diligently pursue such action to completion.

### **7.4 Re-evaluation if Breach Not Cured.**

In the event that a breaching Party does not cure a Breach in accordance with Section 7.3 of this Agreement, Transmission Provider shall conduct a re-evaluation pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement. If based on such re-evaluation, the Project is retained in the Regional Transmission Expansion Plan and the Designated Entity's designation for the Project also is retained, the Parties shall modify this Agreement, including Schedules, as necessary. In all other events, Designated Entity shall be considered in Default of this Agreement, and this Agreement shall terminate in accordance with Section 8.1 of this Agreement.

### **7.5 Remedies.**

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to: (i) commence an action to require the Defaulting Party to remedy such Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof; (ii) suspend performance hereunder; and (iii) exercise such other rights and remedies as it may have in equity or at law. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit. Nothing in this Section 7.5 is intended in any way to affect the rights of a third-party to seek any remedy it may have in equity or at law from the Designated Entity resulting from Designated Entity's Default of this Agreement.

### **7.6 Remedies Cumulative.**

No remedy conferred by any provision of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

### **7.7 Waiver.**

Any waiver at any time by any Party of its rights with respect to a Breach or Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any other Breach or Default or

other matter.

## **Article 8 – Early Termination**

### **8.0 Termination by Transmission Provider.**

In the event that: (i) pursuant to Section 1.5.8(k) of Schedule 6 of the Operating Agreement, Transmission Provider determines to remove the Project from the Regional Transmission Expansion Plan and/or not to retain Designated Entity's status for the Project; (ii) Transmission Provider otherwise determines pursuant to Regional Transmission Expansion Planning Protocol in Schedule 6 of the Operating Agreement that the Project is no longer required to address the specific need for which the Project was included in the Regional Transmission Expansion Plan; or (iii) an event of force majeure, as defined in section 10.0 of this Attachment KK, or other event outside of the Designated Entity's control that, with the exercise of Reasonable Efforts, Designated Entity cannot alleviate and which prevents the Designated Entity from satisfying its obligations under this Agreement, Transmission Provider may terminate this Agreement by providing written notice of termination to Designated Entity, which shall become effective the later of sixty calendar days after the Designated Entity receives such notice or other such date the FERC establishes for the termination. In the event termination pursuant to this Section 8.0 is based on (ii) or (iii) above, Transmission Provider shall not have the right to draw upon the Designated Entity Letter of Credit or retain the cash security and shall cancel the Designated Entity Letter of Credit or return the cash security within thirty days of the termination of this Agreement.

### **8.1 Termination by Default.**

This Agreement shall terminate in the event a Party is in Default of this Agreement in accordance with Sections 7.2 or 7.4 of this Agreement. Upon Default by Designated Entity, Transmission Provider may draw upon the Designated Entity Letter of Credit or retain the cash security.

### **8.2 Filing at FERC.**

Transmission Provider shall make the appropriate filing with FERC as required to effectuate the termination of this Agreement pursuant to this Article 8.

## **Article 9 – Liability and Indemnity**

### **9.0 Liability.**

For the purposes of this Agreement, Transmission Provider's liability to the Designated Entity, any third-party, or any other person arising or resulting from any acts or omissions associated in any way with performance under this Agreement shall be limited in the same manner and to the same extent that Transmission Provider's liability is limited to any Transmission Customer, third-party or other person under Section 10.2 of the Tariff arising or resulting from any act or omission in any way associated with service provided under the Tariff or any Service Agreement

thereunder.

### **9.1 Indemnity.**

For the purposes of this Agreement, Designated Entity shall at all times indemnify, defend, and save Transmission Provider and its directors, managers, members, shareholders, officers and employees 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 the Transmission Provider's acts or omissions associated with the performance of its obligations under this Agreement to the same extent and in the same manner that a Transmission Customer is required to indemnify, defend and save Transmission Provider and its directors, managers, members, shareholders, officers and employees harmless under Section 10.3 of the Tariff.

## **Article 10 – Force Majeure**

### **10.0 Force Majeure.**

For the purpose of this section, an event of force majeure shall mean any cause beyond the control of the affected Party, including but not restricted to, acts of God, flood, drought, earthquake, storm, fire, lightening, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, acts of public enemy, explosions, orders, regulations or restrictions imposed by governmental, military, or lawfully established civilian authorities, which in any foregoing cases, by exercise of due diligence, it has been unable to overcome. An event of force majeure does not include: (i) a failure of performance that is due to an affected Party's own negligence or intentional wrongdoing; (ii) any removable or remedial causes (other than settlement of a strike or labor dispute) which an affected Party fails to remove or remedy within a reasonable time; or (iii) economic hardship of an affected Party.

### **10.1 Notice.**

A Party that is unable to carry out an obligation imposed on it by this Agreement due to Force Majeure shall notify the other Party in writing within a reasonable time after the occurrence of the cause relied on.

### **10.2 Duration of Force Majeure.**

A Party shall not be responsible for any non-performance or considered in Breach or Default under this Agreement, for any deficiency or failure to perform any obligation under this Agreement to the extent that such failure or deficiency is due to Force Majeure. A Party shall be excused from whatever performance is affected only for the duration of the Force Majeure and while the Party exercises Reasonable Efforts to alleviate such situation. As soon as the non-performing Party is able to resume performance of its obligations excused because of the occurrence of Force Majeure, such Party shall resume performance and give prompt notice

thereof to the other Party. In the event that Designated Entity is unable to perform any of its obligations under this Agreement because of an occurrence of Force Majeure, Transmission Provider may terminate this Agreement in accordance with Section 8.0 of this Agreement.

### **10.3 Breach or Default of or Force Majeure under Interconnection Coordination Agreement**

If either of the following events prevents Designated Entity from performing any of its obligations under this Agreement, such event shall be considered a Force Majeure event under this Agreement and the provisions of this Article 10 shall apply: (i) a breach or default of the Interconnection Coordination Agreement associated with the Project by a party to the Interconnection Coordination Agreement other than the Designated Entity; or (ii) an event of Force Majeure under the Interconnection Coordination Agreement associated with the Project.

## **Article 11 – Assignment**

### **11.0 Assignment.**

A Party may assign all of its rights, duties, and obligations under this Agreement in accordance with this Section 11.0. Except for assignments described in Section 11.1 of this Agreement that may not result in the assignment of all rights, duties, and obligations under this Agreement to a Project Finance Entity, no partial assignments will be permitted. No Party may assign any of its rights or delegate any of its duties or obligations under this Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Assignment by the Designated Entity shall be contingent upon, prior to the effective date of the assignment: (i) the Designated Entity or assignee demonstrating to the satisfaction of Transmission Provider that the assignee has the technical competence and financial ability to comply with the requirements of this Agreement and to construct the Project consistent with the assignor's cost estimates for the Project; and (ii) the assignee is eligible to be a Designated Entity for the Project pursuant to Sections 1.5.8(a) and (f) of Schedule 6 of the Operating Agreement. Except as provided in an assignment to a Finance Project Entity to the contrary, for all assignments by any Party, the assignee must assume in a writing, to be provided to the other Party, all rights, duties, and obligations of the assignor arising under this Agreement. Any assignment described herein shall not relieve or discharge the assignor from any of its obligations hereunder absent the written consent of the other Party. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the terms of this Agreement, the Tariff and the Operating Agreement.

## **11.1 Project Finance Entity Assignments**

### **11.1.1 Assignment to Project Finance Entity**

If an arrangement between the Designated Entity and a Project Finance Entity provides that the Project Finance Entity may assume any of the rights, duties and obligations of the Designated Entity under this Agreement or otherwise provides that the Project Finance Entity may cure a Breach of this Agreement by the Designated Entity, the Project Finance Entity may be assigned this Agreement or any of the rights, duties, or obligations hereunder only upon written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement.

### **11.1.2 Assignment By Project Finance Entity**

A Project Finance Entity that has been assigned this Agreement or any of the rights, duties or obligations under this Agreement or otherwise is permitted to cure a Breach of this Agreement, as described pursuant to Section 11.1.1 above, may assign this Agreement or any of the rights, duties or obligations under this Agreement to another entity not a Party to this Agreement only: (i) upon the Breach of this Agreement by the Designated Entity; and (ii) with the written consent of the Transmission Provider, which consent shall not be unreasonably withheld, conditioned, or delayed. In no circumstance, shall an assignment of this Agreement or any of the rights, duties, and obligations under this Agreement alter or diminish the rights of the Transmission Provider under this Agreement, the Tariff, or the Operating Agreement. Any assignees that will construct, maintain, or operate the Project shall be subject to, and comply with the Tariff and Operating Agreement.

## **Article 12 – Information Exchange**

### **12.0 Information Access.**

Subject to Applicable Laws and Regulations, each Party shall make available to the other Party information necessary to carry out each Party's obligations and responsibilities under this Agreement, the Operating Agreement, and the Tariff. Such information shall include but not be limited to, information reasonably requested by Transmission Provider to prepare the Regional Transmission Expansion Plan. The Parties shall not use such information for purposes other than to carry out their obligations or enforce their rights under this Agreement, the Operating Agreement, and the Tariff.

### **12.1 Reporting of Non-Force Majeure Events.**

Each Party shall notify the other Party when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to

cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Section 12.1 shall not entitle the receiving Party to allege a cause of action for anticipatory Breach of this Agreement.

## **Article 13 – Confidentiality**

### **13.0 Confidentiality.**

For the purposes of this Agreement, information will be considered and treated as Confidential Information only if it meets the definition of Confidential Information set forth in Section 1.1 of this Agreement and is clearly designated or marked in writing as “confidential” on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is “confidential.” Confidential Information shall be treated consistent with Section 18.17 of the Operating Agreement. A Party shall be responsible for the costs associated with affording confidential treatment to its information.

## **Article 14 – Regulatory Requirements**

### **14.0 Regulatory Approvals.**

Designated Entity shall seek and obtain all required government authority authorizations or approvals as soon as reasonably practicable, and by the milestone dates set forth in the Development Schedule of Schedule C of this Agreement, as applicable.

## **Article 15 – Representations and Warranties**

### **15.0 General.**

Designated Entity hereby represents, warrants and covenants as follows, with these representations, warranties, and covenants effective as to the Designated Entity during the full time this Agreement is effective:

#### **15.0.1 Good Standing**

Designated Entity is duly organized or formed, as applicable, validly existing and in good standing under the laws of its State of organization or formation, and is in good standing under the laws of the respective State(s) in which it is incorporated.

### **15.0.2 Authority**

Designated Entity has the right, power and authority to enter into this Agreement, to become a Party thereto and to perform its obligations hereunder. This Agreement is a legal, valid and binding obligation of Designated Entity, enforceable against Designated Entity in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

### **15.0.3 No Conflict.**

The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of Designated Entity, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon Designated Entity or any of its assets.

## **Article 16 – Operation of Project**

### **16.0 Initial Operation.**

The following requirements shall be satisfied prior to Initial Operation of the Project:

#### **16.0.1 Execution of the Consolidated Transmission Owners Agreement**

Designated Entity has executed the Consolidated Transmission Owners Agreement and is able to meet all requirements therein.

#### **16.0.2 Execution of an Interconnection Agreement**

Designated Entity has executed an Interconnection Agreement with the Transmission Owner(s) to whose facilities the Project will interconnect, or such agreement has been filed unexecuted with the Commission.

#### **16.0.3 Operational Requirements**

The Project must meet all applicable operational requirements described in the PJM Manuals.

#### **16.0.4 Parallel Operation**

Designated Entity shall have all necessary systems and personnel in place to allow for parallel operation of its facilities with the facilities of the Transmission Owner(s) to which the Project is interconnected consistent with the Interconnection Coordination Agreement associated with the Project.

### **16.0.5 Synchronization**

Designated Entity shall have received any necessary authorization from Transmission Provider and the Transmission Owner(s) to whose facilities the Project will interconnect to synchronize with the Transmission System or to energize, as applicable, per the determination of Transmission Provider, the Project.

### **16.1 Partial Operation.**

If the Project is to be completed in phases, the completed part of the Project may operate prior to completion and Required Project In-Service Date set forth in Schedule C of this Agreement, provided that: (i) Designated Entity has notified Transmission Provider of the successful completion of the Project phase; (ii) Transmission Provider has determined that partial operation of the Project will not negatively impact the reliability of the Transmission System; (iii) Designated Entity has demonstrated that the requirements for Initial Operation set forth in Section 16.0 of this Agreement have been met for the Project phase; and (iv) partial operation of the Project is consistent with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice.

## **Article 17 – Survival**

### **17.0 Survival of Rights.**

The rights and obligations of the Parties in this Agreement shall survive the termination, expiration, or cancellation of this Agreement to the extent necessary to provide for the determination and enforcement of said obligations arising from acts or events that occurred while this Agreement was in effect. The Liability and Indemnity provisions in Article 9 also shall survive termination, expiration, or cancellation of this Agreement.

## **Article 18 – Non-Standard Terms and Conditions**

### **18.0 Schedule E – Addendum of Non-Standard Terms and Conditions.**

Subject to FERC acceptance or approval, the Parties agree that the terms and conditions set forth in the attached Schedule E are hereby incorporated by reference, and made a part of, this Agreement. In the event of any conflict between a provision of Schedule E that FERC has accepted and any provision of the standard terms and conditions set forth in this Agreement that relates to the same subject matter, the pertinent provision of Schedule E shall control.

## Article 19 – Miscellaneous

### 19.0 Notices.

Any notice or request made to or by any Party regarding this Agreement shall be made by U.S. mail or reputable overnight courier to the addresses set forth below:

Transmission Provider:  
PJM Interconnection, L.L.C.  
2750 Monroe Blvd.  
Audubon, PA 19403  
Attention: Manager, Infrastructure Coordination

Designated Entity:  
Transource Energy, LLC  
1 Riverside Plaza,  
Columbus, Ohio 43215-2372  
Attention: Antonio Smyth

### 19.1 No Transmission Service.

This Agreement does not entitle the Designated Entity to take Transmission Service under the Tariff.

### 19.2 No Rights.

Neither this Agreement nor the construction or the financing of the Project entitles Designated Entity to any rights related to Customer-Funded Upgrades set forth in Subpart C of Part VI of the Tariff.

### 19.3 Standard of Review.

Future modifications to this Agreement by the Parties or the FERC shall be subject to the just and reasonable standard and the Parties shall not be required to demonstrate that such modifications are required to meet the “public interest” standard of review as described in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

### 19.4 No Partnership.

Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any joint venture, partnership, association taxable as a corporation, or other entity for the conduct of any business for profit.

**19.5 Headings.**

The Article and Section headings used in this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

**19.6 Interpretation.**

Wherever the context may require, any noun or pronoun used herein shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

**19.7 Severability.**

Each provision of this Agreement shall be considered severable and if for any reason any provision is determined by a court or regulatory authority of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated, and such invalid, void or unenforceable provision shall be replaced with valid and enforceable provision or provisions which otherwise give effect to the original intent of the invalid, void or unenforceable provision.

**19.8 Further Assurances.**

Each Party hereby agrees that it shall hereafter execute and deliver such further instruments, provide all information and take or forbear such further acts and things as may be reasonably required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.

**19.9 Counterparts.**

This Agreement may be executed in multiple counterparts to be construed as one effective as of the Effective Date.

**19.10 Governing Law**

This Agreement shall be governed under the Federal Power Act and Delaware law, as applicable.

**19.11 Incorporation of Other Documents.**

The Tariff, the Operating Agreement, and the Reliability Assurance Agreement, as they may be amended from time to time, are hereby incorporated herein and made a part hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their

respective authorized officials.

**Transmission Provider: PJM Interconnection, L.L.C.**

By: /s/ Suzanne E. Glatz                      Manager, Infrastructure Coordination 11/2/2016  
Name    Title    Date

Printed name of signer: Suzanne E. Glatz

**Designated Entity: Transource Energy, LLC for itself and on behalf of  
Transource Maryland, LLC and Transource Pennsylvania, LLC**

By: /s/ Antonio P. Smith                      President                                      10-26-16  
Name    Title    Date

Printed name of signer: Antonio P. Smith

**SCHEDULE A**

**Description of Project**

Rice – Ringgold Line (b2743.5):

- Build new 230 kV double circuit overhead transmission line between the existing Ringgold Substation and the new Rice Substation; operated as a single circuit.

Rice Substation (b2743.1):

- Tap the existing Conemaugh - Hunterstown 500 kV line to tie in the new 500/230kV Rice Substation connecting to the new Rice - Ringgold 230 kV line.
- Install two 500/230 kV transformers, operated in parallel.

Furnace Run – Conastone Line (b2752.5):

- Build new 230 kV double circuit overhead transmission line between the existing Conastone Substation and the new Furnace Run Substation; operated as a single circuit.

Furnace Run Substation (b2752.1):

- Tap the existing Peach Bottom - Three Mile Island 500 kV line to tie in the new 500/230kV Furnace Run Substation connecting to the new Furnace Run - Conastone 230 kV line.

- Install two 500/230 kV transformers, operated in parallel.

*Note:* Work required to rebuild the Conastone - Northwest 230 kV line will be covered under a separate RTEP project. The work required to replace the Ringgold #3 and #4 230/138 kV transformers, to reconfigure the Ringgold bus, and to rebuild & reconductor the Ringgold -Catoctin 138 kV & replace terminal equipment at both ends of the circuit will also be covered under a separate RTEP project.



*Project Area Map:*

## **SCHEDULE B**

### **Scope of Work**

The new Rice – Ringgold Line will include approximately 27 miles of double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1660 MVA summer normal and summer emergency, between the existing Ringgold Substation and the new Rice Substation.

The new Rice Substation will tie into the existing Hunterstown – Conemaugh 500 kV line. The transmission line and substation remote-end work required to tie the existing Hunterstown – Conemaugh 500 kV line into the new Rice Substation will be performed by others, and not by Transource. The new Rice Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- One 245 kV breaker in a single bus single breaker configuration.
- Three 500 kV breakers in a ring bus configuration.

The new Furnace Run – Conastone Line will include approximately 15 miles of new

double-circuit 230 kV alternating current overhead transmission line configured in a six-wired arrangement (operated as a single circuit), rated at least 1800 MVA summer normal and 2400 MVA summer emergency, between the existing Conastone Substation and the new Furnace Run Substation.

The new Furnace Run Substation will tie into the existing Three Mile Island – Peach Bottom 500 kV line. The transmission line and substation remote-end work required to tie the existing Three Mile Island – Peach Bottom 500 kV line into the new Furnace Run Substation will be performed by others, and not by Transource. The new Furnace Run Substation will include:

- Two at least 900 MVA 500/230 kV transformers, operated in parallel.
- Two 245 kV breakers in a double breaker single bus configuration.
- Four 500 kV breakers in a ring bus configuration.

**SCHEDULE C**

**Development Schedule**

Designated Entity shall ensure and demonstrate to the Transmission Provider that it timely has met the following milestones and milestone dates and that the milestones remain in good standing:

<b>Milestones and Milestone Dates</b>
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with PECO or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Metropolitan Edison Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Baltimore Gas and Electric Company or request the agreement be filed unexecuted.
<b>Execute Interconnection Coordination Agreement.</b> On or before <u>May 31, 2017</u> , Designated Entity must execute the Interconnection Coordination Agreement with Pennsylvania Electric Company or request the agreement be filed unexecuted.
<b>Demonstrate adequate Project financing.</b> On or before <u>December 31, 2016</u> , Designated Entity must demonstrate that adequate project financing has been secured. Project financing must be maintained for the term of this Agreement.
<b>Submit application for any required certificate of convenience and necessity.</b> On or

before June 1, 2018, Designated Entity must demonstrate that any applications for any required state or local certificate(s) of convenience and necessity have been submitted or such certificates have been ruled as not required by the applicable states or local governmental authorities.

**Acquisition of all necessary federal, state, county, and local site permits.** On or before December 1, 2019, Designated Entity must demonstrate that all required federal, state, county and local site permits have been acquired.

**Delivery of major electrical equipment.** On or before December 1, 2019, Designated Entity must demonstrate that all major electrical equipment has been delivered to the project site.

**Substantial Site Work Completed:** On or before January 31, 2020, Designated Entity must demonstrate that at least 20% of Project site construction is completed. Additionally the Designated Entity must submit updated ratings and the final project drawings to the Transmission Provider.

**Demonstrate required ratings.** On or before May 1, 2020, Designated Entity must demonstrate that the project meets all required electrical ratings.

**Required Project In-Service Date.** On or before June 1, 2020, Designated Entity must: (i) demonstrate that the Project is completed in accordance with the Scope of Work in Schedules B of this Agreement; (ii) meets the criteria outlined in Schedule D of this Agreement; and (iii) is under Transmission Provider operational dispatch.

## SCHEDULE D

### PJM Planning Requirements and Criteria and Required Ratings

#### Required Ratings\*

##### Rice – Ringgold Line (b2743.5):

- 1660 / 1660 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - R = 0.0025299 pu
    - X = 0.0275589 pu
    - B = 0.114035 pu

##### Rice Substation (b2743.1):

- Two 900 MVA 500/230 kV transformers

##### Furnace Run – Conastone Line (b2752.5):

- 1800 / 2400 MVA summer normal / emergency
  - Two 230kV circuits each with the following parameters:
    - $R = 0.00134928$  pu
    - $X = 0.0146981$  pu
    - $B = 0.0608184$  pu

Furnace Run Substation (b2752.1):

- Two 900 MVA 500/230 kV transformers

\* These parameters may be updated and are subject to evaluation by PJM.

**SCHEDULE E**

**Non-Standard Terms and Conditions**

Project Development

The Parties acknowledge and agree that Transource Energy, LLC may utilize its wholly owned subsidiaries, Transource Pennsylvania, LLC and Transource Maryland, LLC (the “Transource Subsidiaries”), to perform its obligations to design, engineer, procure, install, and construct the Project.

Transource Pennsylvania, LLC shall design, engineer, procure, install, construct, own, operate and maintain the portion of the Project to be located in the Commonwealth of Pennsylvania, and Transource Maryland, LLC shall design, engineer, procure, install, construct, own, operate, and maintain the portion of the Project to be located in the State of Maryland. Transource Energy, LLC shall provide the overall coordination for the Project work.

The Transource Subsidiaries shall obtain all necessary permits, siting, and other regulatory approvals to undertake their respective portions of the Project and shall perform their work in accordance with the terms of this Designated Entity Agreement.

In accordance with Sections 5.0, 16.0.1, and 16.0.2, of this Designated Entity Agreement:

- (a) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Consolidated Transmission Owners Agreement;
- (b) Transource Energy, LLC, Transource Pennsylvania, LLC and Transource Maryland, LLC shall each execute the Interconnection Coordination Agreement for the Project; and
- (c) The Transource Subsidiaries each shall execute interconnection agreements with Transmission Owners with whom their respective facilities will interconnect.

### Project Cost

The Estimated Project Cost is \$210 million.

Consistent with the proposal submitted by Transource on February 27, 2015, and with the settlement approved by FERC on January 28, 2018 in Docket No. ER17-419, Transource commits to the following terms and conditions relevant to the Project:

- (a) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity plus incentives on the costs incurred for the Project up to the Estimated Project Cost;
- (b) The Transource Subsidiaries shall be entitled to recover the FERC approved return on equity on the costs incurred for the Project above the Estimated Project Cost, but shall forego any return on equity incentives approved by FERC (including the RTO participation adder) for the project cost portion that exceeds the Estimated Project Cost; and
- (c) The Transource Subsidiaries commit to cap the equity component of the capital structure for the competitive elements of the Project at 50% beginning on the earliest of (a) the Project's in-service date, (b) the date non-construction debt (i.e., permanent financing) is put in place, or (c) June 1, 2020.

Document Content(s)

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