

**CONFIRMATION AGREEMENT**

**Between**

**{ XYZ }**

**and**

**Illinois Power Company d/b/a AmerenIP**

This Confirmation Agreement is entered into this \_\_\_\_\_ day of, \_\_\_\_\_ 2008 (the "Date of Execution") between { XYZ } and **Illinois Power Company d/b/a AmerenIP** ("AmerenIP") each individually a "Party" and collectively the "Parties"). Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

The "Commercial Terms" of this Confirmation Agreement are as follows:

**Term:** As of the date of execution of this Confirmation Agreement and through the end of the latest Period of Delivery for a Transaction contained in this Confirmation Agreement with a Contract Quantity greater than zero.

**Buyer:** AmerenIP

**Seller:** { XYZ }

**Product:** Deliverable Capacity ("Capacity") that satisfies the resource adequacy requirement obligations of the Midwest Independent Transmission System Operator, Inc. ("MISO") Open Access Transmission and Energy Markets Tariff, as may be amended from time to time ("TEMT") or as otherwise may be required by the North American Electric Reliability Corporation ("NERC"), the SERC Reliability Corporation ("SERC"), Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

For the purposes of this Confirmation Agreement and each transaction hereunder, Capacity shall mean the capability (expressed in MW) to generate energy from the Capacity Source (hereinafter defined) and that satisfies the Product definition set forth above. Capacity sold under this Confirmation Agreement shall meet the requirements of a designated Network Resource ("NR") as defined in Module E of the TEMT for MISO, as it may be amended from time to time throughout the Period of Delivery, as defined below.

**Transaction A**

**Capacity Source:** XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from June 1, 2008 through and including June 30, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction B**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in

complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from July 1, 2008 through and including July 31, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction C**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from August 1, 2008 through and including August 31, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

#### **Transaction D**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from September 1, 2008 through and including September 30, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction E**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from October 1, 2008 through and including October 31, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer

Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

**Transaction F**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from November 1, 2008 through and including November 30, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

**Transaction G**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from December 1, 2008 through and including December 31, 2008.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction H**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one

hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from January 1, 2009 through and including January 31, 2009.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction I**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the



requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from February 1, 2009 through and including February 28, 2009.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction J**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from March 1, 2009 through and including March 31, 2009.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction K**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from April 1, 2009 through and including April 30, 2009.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

### **Transaction L**

Capacity Source: XXXXX defined by MISO as CP Node XXXXX in the most recent MISO Generation Deliverability Test Results (which currently are February 28, 2008).

The CP Node for the Capacity Source shall be as defined above. However, to the extent Seller desires to change the CP Node, Seller shall provide written and verbal notice to Buyer by no later than one hour prior to the close of the MISO day-ahead energy market for the applicable delivery day. Buyer will accept this change so long as the capacity at the replacement CP Node meets the definition of Capacity listed in the Product section above. Notwithstanding the foregoing, Seller agrees that it shall use reasonable efforts to assist Buyer in complying with any resource adequacy requirements imposed by any applicable legal authority, including without limitations, the requirements and business practices of MISO, NERC, SERC, Ameren's Illinois Balancing Authority or any successor thereto, or any other applicable legal authority.

Delivery Point: CP Node of the Capacity Source, which is [\_\_\_\_\_] CP Node, or the CP Node of any replacement Capacity Source as provided herein.

Period of Delivery: The Period of Delivery shall include "All Days" as defined below and "All Hours" from May 1, 2009 through and including May 31, 2009.

Capacity Price: The Capacity Price shall be \$X/MW-Day for the Period of Delivery. The Capacity Price shall be payable monthly as set forth below.

Energy Price: Not applicable. The Seller has no obligation to provide energy or any product other than Capacity and the Buyer has no obligation to purchase energy or any product other than Capacity. Seller must offer Capacity in the amount of the Contract Quantity (hereinafter defined) to MISO consistent with MISO Module E requirements.

Contract Quantity: X MW per hour for the entire Period of Delivery.

## **Commercial Terms for All Transactions:**

- All Days:** For purposes of all transactions under this Confirmation Agreement, "All Days" shall mean all calendar days within the relevant Period of Delivery including NERC Holidays.
- All Hours:** For purposes of all transactions under this Confirmation Agreement, "All Hours" shall mean twenty-four (24) hours per day, Central Standard Time.
- Forced Outages:** Seller shall provide Buyer with timely notification of Forced Outages (as defined in the NERC Generating Unit Availability Data System Forced Outage reporting guidelines and including any planned or maintenance outages) during any Period of Delivery, including the expected duration of any Forced Outage, but in no case shall Buyer be notified later than ninety (90) minutes from the time Seller is obligated to provide notification of such outage to MISO (such notice by Seller to Buyer being the "Initial Notice"). The expected duration of such outage should be the same duration as reported to MISO. The Seller shall stay in contact with the Buyer with respect to any changes in the expected duration of the Forced Outage. In the Initial Notice provided by Seller to Buyer, Seller shall indicate whether or not Seller intends to provide to Buyer any replacement Capacity. If in the Initial Notice Seller indicates that it intends to provide replacement Capacity, Seller shall provide to Buyer, no later than one hour prior to the close of the MISO day-ahead energy market for the delivery day that first follows the Initial Notice, a subsequent notice (the "Subsequent Notice") regarding the specifics of the replacement Capacity. The Subsequent Notice shall include the name of the unit providing the replacement Capacity, the CP Node related thereto and the amount of the replacement Capacity to be provided during such outage (replacement Capacity must be deemed deliverable in MISO). Seller shall notify Buyer by sending an email to [dlpowersupplyacquisition@ameren.com](mailto:dlpowersupplyacquisition@ameren.com) and call 314-554-3363 (leave a message after hours). Seller shall notify Buyer promptly via e-mail and phone call of the Capacity Resource's return from a Forced Outage and the timing for when any replacement capacity will no longer be provided (if provided by Seller) or is no longer necessary (if procured by Buyer); provided, that if Buyer has procured replacement capacity, Buyer will have the right, in its sole discretion, to not take capacity from the Capacity Resource until the expiration of the projected duration of such Forced Outage, as reported to MISO.
- Special Conditions:** Buyer may sell to a third party any or all of the Capacity purchased under this Agreement for any portion of any Period of Delivery, Buyer will not be required to seek prior approval from Seller to enter into such sales. Seller shall not be permitted to sell the Capacity sold to Buyer

hereunder to any third parties and shall not include the Capacity as part of Seller's resource adequacy requirements (pursuant to Module E of the MISO TEMT or otherwise). Any such sale or inclusion shall be a breach of this Confirmation. Section 7 will not apply to such a breach and Buyer shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with such a breach.

Collateral Threshold: Collateral Threshold, with respect to Buyer and Seller (or Seller's Guarantor, if applicable), will be determined in accordance with Table A below.

For purposes of this Confirmation Agreement, "Credit Rating" means the lowest senior unsecured long-term debt rating then assigned by Standard and Poor's (a division of The McGraw-Hill Companies) ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch Ratings (a subsidiary of Fimalac, S.A.) ("Fitch") or their respective successors, or if such senior unsecured long-term debt rating is not available, then the then assigned issuer rating (or corporate credit rating) assigned by S&P or Fitch, discounted one notch, or the then assigned issuer rating assigned by Moody's; provided, however, that (a) in the event a Party is rated by all three rating agencies, then the lower of the two highest ratings will be used and (b) in the event the two highest ratings are common, such common rating will be used.

Any Guaranty from Seller's Guarantor shall be in a form and in an amount reasonably acceptable to Buyer.

<b>TABLE A</b>			
<b>Credit Rating applicable</b>			
<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>	<b>Collateral Threshold</b>
BBB- or above	Baa3 or above	BBB- or above	\$5,000,000
BB+	Ba1	BB+	\$2,000,000
Below BB+	Below Ba1	Below BB+	\$0

**1. Performance, Title & Delivery:**

With respect to each transaction hereunder, during the applicable Period of Delivery, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, Capacity and Buyer shall pay Seller the Capacity Price therefor. Seller shall be responsible for any costs or charges imposed on or liabilities and risks of loss associated with the possession, transmission and delivery of the Capacity up to and including the Delivery Point (which shall be where title to the Capacity shall pass) and Buyer shall be responsible for any costs or charges imposed on or liabilities and risks associated with possession of and transmission of the Capacity after the Delivery Point for so long as title to the product is held by Buyer. Seller warrants good and marketable title to the Capacity delivered hereunder and agrees to indemnify and hold harmless Buyer from all claims, liabilities, taxes, and damages arising in relation or respect to the Capacity for so long as title to the Capacity is held by

Seller. Buyer agrees to indemnify and hold harmless Seller from all claims, liabilities, taxes, and damages arising in relation or respect to the Product for so long as title to the Capacity is held by Buyer.

## **2. Liability for Non-Performance**

(a) Unless and to the extent prevented from doing so by an event of Force Majeure (as defined herein) or by a Forced Outage, if Seller fails to deliver Capacity to Buyer with respect to any transaction hereunder in accordance with the terms and conditions of this Confirmation Agreement, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount equal to (i) the product of (x) the deficiency in the Contract Quantity delivered and (y) the positive difference, if any, obtained by subtracting the Capacity Price from the Replacement Price, plus (ii) additional costs, if any, incurred by Buyer as a consequence of Seller's failure to perform, including, but not limited to penalties incurred, less (iii) any costs Buyer avoids as a consequence of Seller's failure to perform. "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases substitute or replacement Capacity for the Capacity not delivered by Seller, or absent any such substitute or replacement purchase, the market price for such quantity of substitute or replacement capacity during the contemplated Period of Delivery as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall the Replacement Price include any penalties, ratcheted demand or similar charges or any stranded costs.

(b) Unless and to the extent prevented from doing so by an event of Force Majeure (as defined herein), if Buyer fails to receive the Capacity from Seller with respect to any transaction hereunder in accordance with the terms and conditions of this Confirmation Agreement, Buyer shall pay Seller, on the date payment would otherwise be due from Buyer, an amount equal to (i) the product of (x) the deficiency in the Contract Quantity received and (y) the positive difference, if any, obtained by subtracting the Sales Price from the Capacity Price, plus (ii) additional costs, if any, incurred by Seller as a consequence of Buyer's failure to perform, less (iii) any costs Seller avoids as a consequence of Buyer's failure to perform. "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells the Capacity not received by Buyer or, absent a sale, the market price for such Capacity during the contemplated Period of Delivery as determined by Seller in a commercially reasonable manner.

(c) Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Confirmation Agreement.

## **3. Billing and Payment.**

Seller shall transmit to Buyer, in the month following delivery, a statement setting forth the total amount due to Seller from Buyer for Capacity delivered by Seller during such month, calculated as the product of the Capacity Price multiplied by the Contract Quantity set forth above with respect to the applicable transaction multiplied by a ratio equal to (a) the number of days the Capacity Resource or replacement Capacity is Available in such month divided by (b) the number of days in such month, as well as any other charges due Seller, including liquidated damages, interest, or payments or credits between the Parties relating to this

Confirmation Agreement. For purposes of this Section 3, "Available" means that the Capacity Resource of any replacement Capacity was delivered and available to Buyer at the time the Ameren Illinois system peak occurred on any day. On or before the twentieth (20th) day of each month, Buyer shall pay, by wire transfer, in accordance with the Notices Section hereof, the amount set forth on such statement that Buyer does not dispute (as provided below); provided, however, that if Buyer receives such statement on or after the tenth (10th) day of the month, Buyer shall make payment within ten (10) Business Days (as defined in this Section) of the day of receipt. Overdue payments shall accrue interest from, and including, the due date to, but excluding, the date of payment, at two (2) percent over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" (the "Interest Rate"); provided, however, that the Interest Rate shall never exceed the maximum rate permitted by applicable law. If Buyer, in good faith, disputes the accuracy of a statement, Buyer shall provide a written explanation of the basis for the dispute and pay the portion of such statement conceded to be correct, no later than the due date. If any amount withheld under dispute by Buyer is ultimately determined to be due to Seller, it shall be paid within ten (10) days of such determination, along with interest accrued at the Interest Rate until the date paid. Inadvertent overpayments shall be returned by Seller upon request or deducted by Seller from amounts due to Seller on subsequent statements. "Business Day" means a day on which Federal Reserve member banks in New York City are open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

#### **4. Netting.**

If Buyer and Seller are each required to pay amounts hereunder on the same day for any one or more transactions hereunder, then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed as provided in Section 3 above.

#### **5. Force Majeure.**

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under this Confirmation Agreement, which event or circumstance was not anticipated as of the Date of Execution, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Capacity purchased hereunder, (iii) the loss or failure of Seller's supply that is not caused by an event of Force Majeure; or (iv) Seller's ability to sell the Capacity at a price greater than the Capacity Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. "Transmission

Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

## **6. Default**

(a) An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following, notwithstanding any other provision of this Confirmation Agreement: (i) the failure to make, when due, any payment due and payable under this Confirmation Agreement, if such failure is not remedied within three (3) Business Days after written notice thereof is given by the other Party; (ii) any representation or warranty made by the Defaulting Party herein shall prove to be false or misleading in any material respect; (iii) the failure of the Defaulting Party to perform any covenant set forth in this Confirmation (other than its obligations to deliver or receive Capacity, the remedy for which is provided in this Confirmation) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party; (iv) the filing of a petition or other commencement or authorization by the Defaulting Party of the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors or the filing of any such petition or commencement of any such proceeding against the Defaulting Party; (v) the Defaulting Party otherwise becomes bankrupt or insolvent, however evidenced; (vi) the Defaulting Party becomes unable to pay its debts as they fall due; or (vii) the failure of the Seller to provide Seller Performance Assurance (in which event the Seller will be the Defaulting Party) or the Buyer to provide Buyer Performance Assurance (in which event the Buyer will be the Defaulting Party) in accordance with Section 14 below.

(b) If an Event of Default has occurred and is then continuing, the other Party (the "Non-defaulting Party") may, by not more than twenty (20) days written notice to the Defaulting Party specifying the relevant Event of Default, designate a day ("Early Termination Date") not earlier than the day such notice is effective such that on that date this Confirmation Agreement shall be liquidated and terminated by closing out all transactions remaining to be performed under this Confirmation Agreement. The Party in default shall pay the other Party an amount to be determined based on calculations as defined in the Liability for Non-Performance section of this Confirmation Agreement performed for the remaining term of the Delivery Period and by netting or setting off any damages or other amounts owed under this Confirmation Agreement so as to derive a single liquidated amount. Such amount will be payable within five (5) Business Days by the Party owing such amount to the other.

(c) The Defaulting Party shall indemnify and hold the other Party harmless from all reasonable costs and expenses, including reasonable attorney fees, incurred in the exercise of its remedies hereunder.

(d) Upon the occurrence of an Event of Default with respect to a Party ("X"), the other Party ("Y") will have the right (but not be obliged) without prior notice to X or any other person to set-off or apply any obligation of X owed to Y (whether or not matured or contingent and whether or not arising under this Confirmation Agreement, and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y owed to X (whether or not matured or contingent and whether or not arising under this Confirmation Agreement, and regardless of the currency, place of payment or booking office of the



obligation). Y will give notice to the other Party of any set-off effected hereunder. If any obligation is unascertained, Y may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. Nothing herein shall be deemed to create a charge or other security interest. This provision shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise). Notwithstanding any provision to the contrary contained in this Agreement, the Non-defaulting Party shall not be required to pay to the Defaulting Party any amount under Section 6(b) until the Non-defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-defaulting Party under this Confirmation Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.

#### **7. Limitation of Remedies, Liability and Damages.**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS CONFIRMATION AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ESTIMATED HARM OR LOSS. THE LIMITATION ON DAMAGES PROVIDED BY THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS CONFIRMATION AGREEMENT.

## **8. Waiver of Jury Trial**

EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

## **9. Audit.**

Each Party has the right, at its sole expense and during normal working hours, to examine the books and records of the other Party which relate to, and are reasonably necessary to verify the accuracy of, any statement, charge or computation made pursuant to this Confirmation Agreement. This Section will survive any termination of the Confirmation Agreement for a period of two (2) years from the date of such termination for the purpose of such statement and payment objections.

## **10. Representations and Warranties.**

Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Confirmation Agreement and any other documentation relating to this Confirmation Agreement to which it is a party; (iii) the execution, delivery and performance of this Confirmation Agreement and any other documentation relating to this Confirmation Agreement to which it is a party are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Confirmation Agreement and each other document executed and delivered in accordance with this Confirmation Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (vi) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Confirmation Agreement or any other document relating to this Confirmation Agreement to which it is a party; and (vii) it is acting for its own account, has made its own independent decision to enter into this Confirmation Agreement and as to whether this Confirmation Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Confirmation Agreement; (viii) it is an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act. The

parties agree that this Confirmation Agreement constitutes a "qualified financial contract" as that term is defined in N.Y.G.O.L.§5-701(b); and that this Confirmation Agreement is a "master netting agreement", "forward contract" and/or "swap agreement" for purposes of 11 U.S.C. 101 et seq. or any successor provisions; and (ix) Seller has not sold the Capacity sold to Buyer under any transaction under this Confirmation Agreement to any other person or entity."

**11. Governing Law.**

This Confirmation Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of New York.

**12. Notices.**

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day). Notice by overnight mail or overnight courier shall be deemed to have been received one (1) Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith:

**SELLER**

\_\_\_\_\_  
("Party A")  
All Notices:  
Street: \_\_\_\_\_  
City: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Payments:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Wire Transfer: Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**BUYER**

Illinois Power Company d/b/a Ameren IP  
("Party B")  
All Notices:  
Street: 1901 Chouteau Ave., MC- 1450  
City: St. Louis, MO Zip: 63103  
Attn: Power Supply Acquisition  
Jim Blessing  
Phone: (314) 554-2972  
Facsimile: (314) 206-0210  
Duns: 00-693-60 1 7  
Federal Tax ID Number: 37-0211380

**Invoices:**

Attn: Jim Blessing  
Phone: (314) 554-2972  
Facsimile: (314) 206-0210

**Payments:**

Attn: Sam Cassmeyer  
Phone: (314) 554-4287  
Facsimile: (314) 554-6328

BNK: US Bank  
ABA: 042000013  
ACCT: 1301 030 18052

**Credit and Collections:**

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

**Confirmations:**

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

With additional Notices of an Event of  
 Default or Potential Event of Default to:

Attn: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_

**Credit and Collections:**

Attn: Lee Lalinsky  
 Phone: (314) 206-1166  
 Facsimile: (314) 206-0210

**Confirmations:**

Attn: Jim Blessing  
 Phone: (314) 554-2972  
 Facsimile: (314) 206-0210

With additional Notices of an Event of  
 Default or Potential Event of Default to:

Attn: President & CEO  
 Phone: (309) 677-5220  
 Facsimile: (309) 677-5016

**13. Assignment.**

Neither Party shall assign this Confirmation Agreement or its rights hereunder without the prior written consent of the other Party; which shall not be unreasonably withheld or delayed; provided, however, either Party may without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Confirmation Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Confirmation Agreement to an affiliate of such Party which affiliate's creditworthiness is comparable to or higher than that of such Party, or (iii) transfer or assign this Confirmation Agreement to any person or entity succeeding to all or substantially all of the assets of such Party which person's or entity's creditworthiness is comparable to or higher than that of such Party. In each such case, any assignee shall agree in writing to be bound by the terms and conditions hereof. Creditworthiness under this Section is to be determined by the non-transferring Party.

**14. Performance Assurance.**

(a) Seller Protection. If at any time Buyer's Collateral Threshold is lower than the value of the highest two (2) consecutive months of receivables that would be due to Seller from Buyer during the remaining Period of Delivery for all transactions hereunder as estimated by Seller, then Seller may require assurance of Buyer's ability to perform any obligation hereunder. Such assurance ("Buyer's Performance Assurance") may include (i) posting of a commercially reasonable letter of credit in favor of Seller in a form and by an issuing bank acceptable to Seller, (ii) posting of cash collateral with Seller, or (iii) other commercially reasonable security acceptable to Seller; provided, however, that in no event shall Seller require the value of such Buyer's Performance Assurance on any day to exceed the difference between the highest two (2) consecutive months of receivables that would be due to Seller from Buyer during the remaining Period of Delivery for all transactions hereunder and Buyer's Collateral Threshold, rounded up to the nearest \$10,000, as estimated by Seller. In the event that Buyer fails to provide such Buyer's Performance Assurance within two (2) Business Days if received by 1:00 PM EPT, or within three (3) Business Days if received after 1:00 PM EPT, from the date of Buyer's receipt of Seller's request, then an Event of Default shall be deemed to have occurred and Seller shall be entitled to the remedies set forth under the Default section above, as the Non-defaulting Party.

(b) Buyer Protection. If at any time Seller's (or Seller's Guarantor's, if applicable) Collateral Threshold is lower than 10% of the remaining contract value with respect to all outstanding transactions hereunder as estimated by Buyer, then Buyer may require assurance of Seller's ability to perform any obligation hereunder. Such assurance ("Seller's Performance Assurance") may include (i) posting of a commercially reasonable letter of credit in favor of Buyer in a form and by an issuing bank acceptable to Buyer, (ii) posting of cash collateral with Buyer, or (iii) other commercially reasonable security acceptable to Buyer. The amount of such Seller's Performance Assurance shall be equal to the positive difference, if any, between 10% of the remaining contract value with respect to all outstanding transactions hereunder and the Seller's Collateral Threshold, rounded up to the nearest \$10,000, as estimated by Buyer. In the event that Seller fails to provide such Seller's Performance Assurance within two (2) Business Days if received by 1:00 PM EPT, or within three (3) Business Days if received after 1:00 PM EPT, from the date of Seller's receipt of Buyer's request, then an Event of Default shall be deemed to have occurred and Buyer shall be entitled to the remedies set forth under the Default section above, as the Non-defaulting Party.

(c) Grant of Security Interest. Each Party providing collateral above (the "Pledgor") hereby pledges to the other party (the "Secured Party") as security for the Pledgor's obligations under this Confirmation Agreement, and grants to the Secured Party a first priority continuing security interest in, lien on and right of setoff against all collateral posted to or received by the Secured Party hereunder. Upon the transfer by the Secured Party to the Pledgor of any such collateral, the security interest and lien granted hereunder on such collateral will be released immediately and, to the extent possible, without any further action by either Party.

#### **15. Regulatory Authorization; FERC Standard of Review: Mobile-Sierra.**

The effective date for this Confirmation Agreement shall be the date of execution of this Confirmation Agreement as set forth in the first paragraph of the preamble. If this Confirmation Agreement is filed with the Federal Energy Regulatory Commission ("FERC") accompanied by a request by Seller under Section 205 of the Federal Power Act, 16 U.S.C. § 791 et seq., or any successor legislation (the "Federal Power Act") for the Confirmation Agreement to be accepted and/or approved by FERC, the continued effectiveness of this Confirmation Agreement is expressly conditioned upon FERC's acceptance and/or approval as more specifically provided in this paragraph. If Seller files the Confirmation Agreement with FERC, such filing shall be submitted no later than 60 days prior to the beginning of the earliest Period of Delivery for which the Contract Quantity is greater than zero set forth above and shall contain a request that the FERC permit this Confirmation Agreement to be effective on or prior to the beginning of such Period of Delivery. The Seller will use its best efforts to secure the timely acceptance and/or approval from FERC in order to effectuate the terms of this Confirmation Agreement, and Buyer will not interfere with Seller's efforts and will use commercially reasonable efforts, at Seller's request and cost, to assist and support Seller in such efforts. In the event FERC does not accept or approve this Confirmation Agreement without condition or modification or rejects this Confirmation Agreement, upon Seller's or Buyer's receipt of such condition, modification or rejection from FERC, this Confirmation Agreement shall be of no further force or effect and neither Party will have any further

liability or obligation to the other Party under this Confirmation Agreement. If FERC does not accept or approve this Confirmation Agreement prior to a point in time five (5) Business Days prior to the start of the Period of Delivery of any Transaction for which the Contract Quantity is greater than zero set forth above, the Contract Quantity for such Transaction shall be deemed to be zero and, for the avoidance of doubt, neither Party will have any further liability or obligation to the other Party with respect to such Transaction under this Confirmation Agreement.

It is the intent of the Parties that the rates and all other terms and conditions of the services provided hereunder shall not be subject to change under Sections 205 or 206 of the Federal Power Act without the consent of both Parties. Each of the Parties hereto agrees not to unilaterally file with the FERC a change in the rates, terms or conditions of this Confirmation Agreement. Moreover, absent agreement of all Parties to a proposed change, the standard of review for changes to any rate, term or condition of this Confirmation Agreement proposed by a non-Party or the FERC or any other governing authority acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pac Power Co.*, 350 U.S. 348 (1956). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

#### **16. Imaged Agreement.**

Any original executed Confirmation Agreement, or other related document may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation Agreement, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, this Confirmation Agreement or the Imaged Agreement (or photocopies of the transcription of the recording, the Confirmation Agreement or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.

#### **17. Confidentiality.**

Neither Party shall disclose the terms or conditions of this Confirmation Agreement to a third party (other than the Party's or Party's affiliates' employees, officers, directors, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except with written consent from the other Party or in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its affiliates; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure; provided, however, that Buyer shall have the ability to disclose the Commercial Terms of this Confirmation

Agreement in order to demonstrate compliance with all applicable laws, rules, regulations and requirements regarding resource adequacy. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Either Party may disclose any one or more of the commercial terms of this Confirmation Agreement (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy and/or capacity price index.

#### **18. Operation; Cooperation.**

In performing its obligations under this Confirmation, Seller agrees to conduct its power supply operations consistent with Prudent Utility Practice. "Prudent Utility Practice" means the applicable practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the United States of America, during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment by a prudent utility operator, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety, expedition and the requirements of any governmental authority having jurisdiction.

The Parties agree to provide such reasonable cooperation to each other as necessary to give effect to the terms of this Confirmation.

#### **19. General.**

No amendment or modifications to this Confirmation Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Confirmation Agreement shall not impart any rights enforceable by any third-party (other than a permitted successor or assignee bound to this Confirmation Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Confirmation Agreement.

Please confirm that the terms stated herein accurately reflect the agreement reached on \_\_\_\_\_ between AmerenIP and \_\_\_ by returning an executed copy of this letter by facsimile to Jim Blessing of AmerenIP at **(314) 206-0210**. Your response should reflect the appropriate party in your organization who has the authority to enter into this transaction. Failure to object to any or all terms in this Confirmation or to respond within two (2) business days from the date first stated above shall be deemed acceptance of all terms and conditions as stated in this Confirmation.

If you have any questions, please contact Jim Blessing at (314) 554-2972.

{ XYZ }

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name:

Title:

Illinois Power d/b/a AmerenIP

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Craig D. Nelson

Title: Vice President