
CONTRACT PROVISIONS IN THE EEI MASTER AGREEMENT

CRAIG ENOCHS, REED SMITH

MARK HOLLER, TENASKA POWER SERVICES

GINGER PRICE, ENERGY CONTRACT MANAGEMENT



NAPCO

Edison Electric Institute (EEI)

- Organized in 1933
- Association that represents all U.S. investor-owned electric companies
- Membership based association
- Provides public policy leadership, strategic business intelligence, and essential meetings and forums
- Website: www.eei.org

EEI Master Agreement

- Created by a working group and contract drafting committee from more than 80 EEI member utilities, affiliated and independent power marketers, merchant power, and end-use representatives.
- “The Master Contract provides for the following benefits: streamlines establishing a trading relationship, provides real-time credit provisions, standardizes product definitions, and focuses traders on the transaction's basic negotiable elements, e.g., price, quantity, location, and duration.” (Sourced from EEI website.)
- Available online for free at: www.eei.org/resourcesandmedia/mastercontract

Interactive Session

- EEI Master Agreement with Cover Sheet Elections and Other Changes for Group Discussion
- Five Mock Companies:
 - Conglomerated Global Commodities, LLC
 - Main Street Utilities Trading, Inc.
 - The City of Greenacre, Texas
 - Merchant Generation Holdings, LLC
 - Risk Reward Strategies, LLC

Special Note: EEI Cover Sheet Elections and Other Changes are provided to facilitate discussion only and not intended as suggested language for industry documents.

Credit Rating

Article One

Section 1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its long-term debt, then the rating then assigned to such entity as an **issues issuer** rating by S&P, Moody’s or any other rating agency by the Parties as set forth in the Cover Sheet. In the event of an inconsistency in ratings assigned by S&P and Moody’s (a “split rating”), the lowest rating assigned will control.

Specified Transactions

Article One

1.62 “Specified Transactions” means any contract or transaction (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A) and Party B (or any Guarantor of Party B).

Article Five

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (i) The occurrence with respect to such Party of an Event of Default (howsoever defined) under a Specified Transaction.

Specified Transactions

Article Five

Article Five is amended by adding the following new Section 5.8:

“5.8 Termination of Specified Transactions. The occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a party hereto (“Y”) shall constitute a material breach and event of default (howsoever described) under all Specified Transactions to which Y is a party, whereupon the Non-defaulting Party (“X”) shall have the right to terminate, liquidate and otherwise close out any such Specified Transactions (and Y shall be liable for any damages suffered by X as a result thereof).”

Net Out of Settlement Amounts

Article Five

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

Notice of Payment of Termination Payment

Article Five

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party an amount under Article Five 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 Agreement or otherwise have been fully and finally performed; provided, however, the period for obtaining such confirmation shall not extend more than sixty (60) days after the date the Defaulting Party's payment is due.

Suspension of Performance

Article Five

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if ~~(a)~~ an Event of Default ~~or (b) a Potential Event of Default~~ shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ~~ten (10) NERC Business Days~~ ninety (90) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

Downgrade Event

Article Eight

8.1(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

Assignment

Article Ten

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; 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 Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, ~~(ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however,~~ (ii) transfer or assign this Agreement to an Affiliate of such Party so long as such Affiliate's creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

Other Products and Service Levels

If the Parties agree to a service level/product defined by reference to a different agreement, tariff, set of rules or protocols (herein “agreement”) (e.g., the WSPP Agreement, the PJM Operating Agreement, the ERCOT Protocols, etc.) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable.

“WSPP Agreement” means the WSPP Agreement published by WSPP, Inc., as amended from time to time.