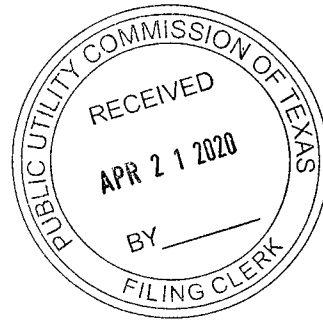


Control Number: 35077



Item Number: 1096

Addendum StartPage: 0



June 1, 2020

Filing Clerk
Public Utility Commission of Texas
1701 Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Re: Project No./Docket No. 35077 – Wind Energy Transmission Texas, LLC’s Generation Interconnection Agreement Filing Pursuant to PUCT Substantive Rule 25.195(e)

Attached, please find the Generation Interconnection Agreement (the “Agreement”) between Wind Energy Transmission Texas, LLC (“WETT”) and Pioneer Hutt Wind Energy LLC dated to be effective as of May 22, 2020, for filing at the Public Utility Commission of Texas pursuant to Substantive Rule 25.195(e). Because the Agreement contains slight deviations from the Commission-approved Standard Generation Interconnection Agreement, WETT has prepared this letter explaining the changes and requests that it be filed with the Agreement.

Body of the Agreement:

- All references to the “ERCOT Standard Generation Interconnection Agreement” or “Standard Generation Interconnection Agreement” have been modified to read as “Generation Interconnection Agreement.”
- Sections (F) and (G) of the fifth paragraph have been altered to read: “F. The notice requirements attached hereto as Exhibit ‘D’; and G. The Security Arrangement Details attached hereto as Exhibit ‘E’.”
- The final paragraph now reads: “IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.”

Exhibit “A”:

- The following definition for “Affiliate” has been added as Section 1.1: “‘Affiliate’ shall mean any person or entity that controls, is controlled by, or is under common control with

the Party in question. For purposes of this definition, control shall mean direct or indirect ownership or control of a majority of the voting interests of an entity.”

- The following definition for “Applicable Laws and Regulations” has been added as Section 1.2: “‘Applicable Laws and Regulations’ shall mean all applicable federal, state, and local laws, ordinances, rules, and regulations, and all duly promulgated orders and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties and/or their respective facilities. Notwithstanding the foregoing, each Party shall have the right at its sole expense to contest the application of any Applicable Laws and Regulations to such Party before the appropriate authorities.”
- The following definition for “FERC” has been added as Section 1.10: “‘FERC’ shall mean the Federal Energy Regulatory Commission, or any successor thereto.”
- All other definitions have been renumbered accordingly.
- The references to PUCT Rules 25.5(8), 25.198(g), 25.5(23), and 25.198(f) in the Article 1 definitions of “Control Area,” “Facilities Study,” “Good Utility Practice,” and “System Security Study,” respectively, have been deleted and replaced with “Chapter 25 of the PUCT Rules or its successor.” In the definition of “Reasonable Efforts,” the phrase “(pursuant to PUCT Rule 25.196(e))” has been deleted entirely.
- In Sections 2.1(B) and 8.3, the words “scheduled Commercial Operation date” have been capitalized as “Scheduled Commercial Operation Date” to correspond with that term as identified in Exhibit “B.”
- Section 2.3 has been changed to read as follows: “Upon termination of this Agreement, the Parties will disconnect the GIF from the TIF in accordance with Good Utility Practice and all Applicable Laws and Regulations.”
- In Section 3.1, the following has been added as the second sentence of the paragraph: “The Parties agree to assist one another and use all reasonable efforts in obtaining applicable approvals or making such filings as promptly as practicable.”
- In Section 4.1(A), the penultimate sentence has been modified to read: “The TSP shall not be required to undertake any initiative which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Applicable Laws and Regulations, or ERCOT Requirements.”
- The following has been added as Section 4.1.1: “Additional Notices to Proceed and Security. In addition to the conditions and the Parties’ obligations under Section 4.2 and Section 4.3, the TSP’s obligations under this Agreement are made expressly subject to the Generator providing the written authorizations and security in the manner and amounts required under Attachment 1 to Exhibit ‘B.’”

- The following has been added as the last sentence of Section 4.4: “Generator will similarly provide written notice of any anticipated delays with respect to Generator providing the required notices to proceed and corresponding security as set forth in Attachment 1 to Exhibit ‘B.’”
- The following has been added as Section 4.5, with subsequent sections being renumbered accordingly: “Identification of Qualified Scheduling Entity. Generator shall supply notification to the TSP identifying its Qualified Scheduling Entity (‘QSE’) ninety (90) days prior to the In-Service Date, and Generator shall supply notification to the TSP sixty (60) days prior to any changes in QSE, thereafter.”
- Section 4.6 has been modified to read: “To the extent this Agreement incorporates a specified In-Service Date and the Generator fails to satisfy conditions precedent under Sections 4.1.1, 4.2 and 4.3 so that the TSP may meet the In-Service Date, the Parties will negotiate in good faith to establish a new schedule for completion of the TIF, and the In-Service Date and the Scheduled Commercial Operation Date identified in Exhibit ‘B’ shall be extended accordingly.”
- In Section 5.2, the last instance of the word “Generator” has been replaced with “Plant.”
- In Section 5.2, the following has been added to the list of information and documents that the Generator is to deliver to WETT: “the impedance of any transmission voltage lines that are part of the GIF.”
- Section 5.5(H) has been changed to read as follows: “Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention of and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible in accordance with ERCOT Requirements. If a meter is found to be not in compliance with the accuracy standards required by ERCOT Requirements, readings for the prior six (6) months, or from the time the meter was in service since last tested, but not exceeding six (6) months, shall be corrected, and adjusted bills shall be rendered.”
- Section 5.6(B) has been changed to read as follows: “The Generator shall be responsible for protection of its facilities consistent with ERCOT Requirements and Good Utility Practice.”
- In Section 6.1, the phrase “applicable laws and regulations” has been capitalized to correspond to the defined term.
- In Section 6.1, the following sentence has been added as a new fourth sentence: “Each Party shall use commercially reasonable efforts to minimize the frequency and duration of any outages.”

- In Section 6.1, the last sentence has been changed to read as follows: “All testing of the Plant that affects the operation of the Point of Interconnection shall be coordinated between the TSP, the Control Area(s) in which the Plant and the TSP are located, the Generator, and ERCOT and will be conducted in accordance with ERCOT Requirements.”
- Section 6.7 has been changed to read as follows: “On a timely basis, the Parties shall exchange all information necessary to comply with ERCOT Requirements and shall otherwise reasonably cooperate with each other.”
- In Section 8.3, the first sentence has been changed to read as follows: “The TSP requires the Generator to pay a reasonable deposit or provide another means of security, to cover the costs of applying for and obtaining any applicable CCN, acquiring rights in applicable real property, planning, licensing, procuring equipment and materials, and constructing the TIF.”
- In Section 8.3, references to the applicable Phase have been deleted. The third sentence now reads as follows: “Within five business days after the Plant achieves Commercial Operation, the TSP shall return the deposit or security to the Generator.”
- In Section 8.3, the penultimate sentence has been changed to read as follows: “If the Plant has not achieved Commercial Operation within one year after the Scheduled Commercial Operation Date identified in Exhibit ‘B’ or if the Generator terminates this Agreement in accordance with Section 2.1 and the TIF are not required, the TSP may, subject to the provisions of Section 2.2, retain as much of the deposit or security as is required to cover the costs it incurred in applying for and obtaining any applicable CCN, acquiring rights in applicable real property, planning, licensing, procuring equipment and materials, and constructing the TIF.”
- Section 9.1(E) has been changed to read as follows: “The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees (‘Other Party Group’) as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against the Other Party Group and provide thirty (30) days advance written notice to Other Party Group prior to cancellation or any material change in coverage or condition.”
- Section 9.1(I) has been changed to read as follows: “Within ten (10) days following execution of this Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certificates of insurance (or self-insurance letters, in the case of self-insurance) evidencing all insurance required in this Agreement, executed

by each insurer or by an authorized representative of each insurer (or in the case of self-insurance letters, by a representative of the applicable Party). Any self-insurance letter provided by Generator will expressly state that it is on behalf and for the benefit of Generator (as opposed to a parent company).”

- Section 9.1(J) has been changed to read as follows: “Notwithstanding the foregoing, each Party may comply with the requirements under this Article 9 to the extent it is able to do so through a self-insurance program; provided that, and for so long as, such Party’s corporate credit rating or Party’s parent company’s corporate credit rating maintains an investment grade rating, or better, by Standard & Poor’s. Notwithstanding anything in this Agreement to the contrary, in the event Generator contemplates either a change in control or equity ownership of Generator or an assignment of this Agreement, TSP shall have the right to require Generator to comply with the requirements under this Article 9 utilizing insurers authorized to do business in Texas rather than through a self-insurance program.”
- Section 10.4 has been modified to allow “postage prepaid and return receipt requested,” among other forms of notice.
- In Section 10.7, the references to “the Federal Energy Regulatory Commission” have been changed to “FERC” to correspond to the defined term.
- In Section 10.17, the word “affiliate” has been capitalized to correspond to the defined term.

Exhibit “B”:

- Attachment 1 to Exhibit “B” has been added to set forth deadlines related to required notices to proceed and security. The following has been added to Exhibit “B” regarding same: “Attachment 1 to Exhibit ‘B’ sets forth the notice to proceed and security requirements the Generator must comply with so that TSP may maintain schedule to meet the In-Service Date. The information in Attachment 1 to Exhibit ‘B’ is based on representations made by the Generator as well as circumstances in existence as of the Effective Date. Such information is subject to change as provided in this Agreement. The Generator acknowledges and agrees that the In-Service Date, Scheduled Trial Operation Date, and Scheduled Commercial Operation Date are contingent upon the Generator timely providing notices to proceed and security amounts as required herein. Without limiting any other rights of the TSP under this Agreement, if the Generator fails to timely provide any notice to proceed and/or security amount as set forth in Attachment 1 to Exhibit ‘B,’ the schedule, In-Service Date, Scheduled Trial Operation Date, and Scheduled Commercial Operation Date are subject to change at TSP’s discretion.”
- The following has been added to the end of Exhibit “B”:

“The Parties acknowledge and agree that the Generator’s failure to fulfill the conditions under Section 4.1.1, Section 4.2, and Section 4.3 in a timely fashion in accordance with the dates set forth in this Exhibit ‘B’ will result in adjustments to the applicable In-Service Date, Scheduled Trial Operation Date, and Scheduled Commercial Operation Date, and may cause the need for additional or revised studies to be performed or other reasonably related conditions or obligations to be fulfilled. The Parties further acknowledge and agree that ERCOT may require additional studies at any time due to changing system conditions or otherwise and that this Agreement is subject to revision as necessary based on the outcome of any such additional studies.

Generator acknowledges and agrees that the dates set forth in this Exhibit ‘B’ were established based on the circumstances of Generator being the next-in-line entity attempting to interconnect its generating facilities to TSP’s TIF, and that such dates are subject to change in the event a third party generator desiring to interconnect said third party generator’s generating facilities to TSP’s TIF (an ‘Intervening Generator’) provides the applicable notice to proceed and security with respect to the Intervening Generator’s interconnection prior to TSP having received from Generator Generator’s notice to proceed and security as specified under Section 4.1.1, Section 4.2, and Section 4.3.

Generator acknowledges and agrees that the activities of an Intervening Generator that provides the applicable notice to proceed and security as described in the paragraph above may result in the need for additional studies and/or restudies, that such additional studies and/or restudies may result in a change in the number of days needed for TSP to design, procure, and construct the TIF, and that any such changes may require changes to one or more dates set forth in this Exhibit ‘B’ Generator further acknowledges and agrees that any such additional studies and/or restudies may also result in changes to the financial security amounts set forth in Exhibit ‘E.’

Generator acknowledges and agrees that, at Generator’s request and as an accommodation to Generator, TSP is entering into this Agreement based on a large number of assumptions as of the Effective Date and also prior to the results of the studies contemplated by the Full Interconnection Study Agreement executed as of March 31, 2020 between TSP and Generator (as the same may be amended from time to time) (the ‘Study Results’) being available. Without limiting the foregoing, the dates set forth in this Exhibit ‘B’ were based on the assumption that any CCN proceeding contemplated by this Agreement will be uncontested. Accordingly, Generator acknowledges and agrees that one or more dates set forth in this Exhibit ‘B,’ one or more interconnection details in Exhibit ‘C,’ and/or the financial security amounts set forth in Exhibit ‘E’ are all subject to change based upon any of the assumptions on which this Agreement was based being incorrect or otherwise upon the Study Results. In such event, the Parties agree to negotiate an applicable amendment to this Agreement to reflect any corrected assumptions and/or the Study Results.”


Exhibit “C”:

- Paragraph 14 regarding cost estimate differences has been deleted as inapplicable.

Sincerely,

WIND ENERGY TRANSMISSION TEXAS, LLC

By:

Name:  Travis Leverett

Title: Contracts Manager

GENERATION INTERCONNECTION AGREEMENT

Between

WIND ENERGY TRANSMISSION TEXAS, LLC

and

PIONEER HUTT WIND ENERGY LLC

May 22, 2020

TABLE OF CONTENTS

GENERATION INTERCONNECTION AGREEMENT	3
EXHIBIT “A”	5
TERMS AND CONDITIONS OF THE GENERATION INTERCONNECTION AGREEMENT	5
<i>ARTICLE 1. DEFINITIONS.....</i>	<i>5</i>
<i>ARTICLE 2. TERMINATION.....</i>	<i>7</i>
<i>ARTICLE 3. REGULATORY FILINGS.....</i>	<i>7</i>
<i>ARTICLE 4. INTERCONNECTION FACILITIES ENGINEERING,.....</i>	<i>7</i>
<i>PROCUREMENT, AND CONSTRUCTION</i>	<i>7</i>
<i>ARTICLE 5. FACILITIES AND EQUIPMENT.....</i>	<i>10</i>
<i>ARTICLE 6. OPERATION AND MAINTENANCE</i>	<i>13</i>
<i>ARTICLE 7. DATA REQUIREMENTS.....</i>	<i>14</i>
<i>ARTICLE 8. PERFORMANCE OBLIGATION</i>	<i>15</i>
<i>ARTICLE 9. INSURANCE</i>	<i>16</i>
<i>ARTICLE 10. MISCELLANEOUS.....</i>	<i>17</i>
EXHIBIT “B”	23
TIME SCHEDULE	23
EXHIBIT “C”	26
INTERCONNECTION DETAILS	26
EXHIBIT “D”	28
NOTICE AND EFT INFORMATION OF THE GENERATION INTERCONNECTION AGREEMENT.....	28
EXHIBIT “E”	29
SECURITY ARRANGEMENT DETAILS	29

GENERATION INTERCONNECTION AGREEMENT

This Generation Interconnection Agreement (“Agreement”) is made and entered into this 22nd day of May, 2020 (the “Effective Date”) between Wind Energy Transmission Texas, LLC (“Transmission Service Provider”) and Pioneer Hutt Wind Energy LLC (“Generator”), hereinafter individually referred to as “Party,” and collectively referred to as “Parties.” In consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

Transmission Service Provider represents that it is a public utility that owns and operates facilities for the transmission and distribution of electricity. Generator represents that it will own and operate the Plant. Pursuant to the terms and conditions of this Agreement, Transmission Service Provider shall interconnect Generator’s Plant with Transmission Service Provider’s System consistent with the Facilities Study Agreement executed between the Parties on March 31, 2020.

This Agreement applies only to the Plant and the Parties’ interconnection facilities as identified in Exhibit “C”.

This Agreement shall become effective on the Effective Date, subject to Governmental Authority approval, if required, and shall continue in full force and effect until terminated in accordance with Exhibit “A”.

This Agreement will be subject to the following, all of which are incorporated herein:

- A. The “Terms and Conditions of the Generation Interconnection Agreement” attached hereto as Exhibit “A”;
- B. The ERCOT Requirements (unless expressly stated herein, where the ERCOT Requirements are in conflict with this Agreement, the ERCOT Requirements shall prevail);
- C. The PUCT Rules (where the PUCT Rules are in conflict with this Agreement, the PUCT Rules shall prevail);
- D. The Time Schedule attached hereto as Exhibit “B”;
- E. The Interconnection Details attached hereto as Exhibit “C”;
- F. The notice requirements attached hereto as Exhibit “D”; and
- G. The Security Arrangement Details attached hereto as Exhibit “E”.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

TRANSMISSION SERVICE PROVIDER:

WIND ENERGY TRANSMISSION
TEXAS, LLC

By: _____

Title: CEO

Date: 5/26/2020

GENERATOR:

PIONEER HUTT WIND ENERGY LLC

By: Chris M Paulsen

Title: VP Business Development

Date: 5/21/2020

Exhibit “A”
Terms and Conditions of the Generation Interconnection Agreement

ARTICLE 1. DEFINITIONS

Capitalized terms shall have the meanings as set forth below, except as otherwise specified in the Agreement:

1.1 “Affiliate” shall mean any person or entity that controls, is controlled by, or is under common control with the Party in question. For purposes of this definition, control shall mean direct or indirect ownership or control of a majority of the voting interests of an entity.

1.2 “Applicable Laws and Regulations” shall mean all applicable federal, state, and local laws, ordinances, rules, and regulations, and all duly promulgated orders and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties and/or their respective facilities. Notwithstanding the foregoing, each Party shall have the right at its sole expense to contest the application of any Applicable Laws and Regulations to such Party before the appropriate authorities.

1.3 “CCN” shall mean a Certificate of Convenience and Necessity issued by the PUCT.

1.4 “Commercial Operation” shall mean the date on which Generator declares that the construction of the Plant has been substantially completed, Trial Operation of the Plant has been completed, and the Plant is ready for dispatch.

1.5 “Control Area” shall have the meaning ascribed thereto in Chapter 25 of the PUCT Rules or its successor.

1.6 “ERCOT” shall mean the Electric Reliability Council of Texas, Inc.

1.7 “ERCOT Requirements” means the ERCOT Operating Guides, ISO Generation Interconnection Procedures as well as any other documents adopted by the ISO or ERCOT relating to the interconnection and operation of generators and transmission systems in ERCOT as amended from time to time, and any successors thereto. Any requirement in the foregoing documents imposed upon generation entities or generation facilities shall become the responsibility of the Generator, and any requirements imposed on transmission providers or transmission facilities shall become the responsibility of the TSP.

1.8 “Facilities Study” shall have the meaning as described in Chapter 25 of the PUCT Rules or its successor.

1.9 “Facilities Study Agreement” shall mean an agreement executed by the Parties relating to the performance of the Facilities Study.

1.10 “FERC” shall mean the Federal Energy Regulatory Commission, or any successor thereto.

- 1.11 “GIF” shall mean Generator’s interconnection facilities as described in Exhibit “C.”
- 1.12 “Good Utility Practice” shall have the meaning described in Chapter 25 of the PUCT Rules or its successor.
- 1.13 “Governmental Authority(ies)” shall mean any federal, state, local or municipal body having jurisdiction over a Party.
- 1.14 “In-Service Date” shall be the date, as reflected in Exhibit “B,” that the TIF will be ready to connect to the GIF.
- 1.15 “ISO” shall mean the ERCOT Independent System Operator.
- 1.16 “Plant” shall mean the electric generation facility owned and operated by the Generator, as specified in Exhibit “C.”
- 1.17 “Point of Interconnection” shall mean the location(s) where the GIF connects to the TIF as negotiated and defined by the Parties and as shown on Exhibit “C” of this Agreement.
- 1.18 “PUCT” shall mean the Public Utility Commission of Texas.
- 1.19 “PUCT Rules” shall mean the Substantive Rules of the PUCT.
- 1.20 “Reasonable Efforts” shall mean the use of Good Utility Practice and the exercise of due diligence.
- 1.21 “System Protection Equipment” shall mean those facilities located within the TIF and the GIF as described in Section 5.6 and Exhibit “C.”
- 1.22 “System Security Study” shall have the meaning as described in Chapter 25 of the PUCT Rules or its successor.
- 1.23 “TCOS” shall mean the TSP’s transmission cost of service as allowed by the applicable Governmental Authority.
- 1.24 “TIF” shall mean the TSP’s interconnection facilities as described in Exhibit “C” to this Agreement.
- 1.25 “Trial Operation” shall mean the process by which the Generator is engaged in on-site test operations and commissioning of the Plant prior to Commercial Operation.
- 1.26 “TSP” shall mean the Transmission Service Provider.
- 1.27 “TSP System” shall mean the electric transmission facilities, including the TIF, and all associated equipment and facilities owned and/or operated by the TSP.

ARTICLE 2. TERMINATION

2.1 Termination Procedures. This Agreement may be terminated as follows:

A. the Generator may terminate this Agreement after giving the TSP thirty (30) days advance written notice; or

B. the TSP may terminate this Agreement (subject to Governmental Authority approval, if required) on written notice to the Generator if the Generator's Plant has not achieved Commercial Operation within one year after the Scheduled Commercial Operation Date reflected in Exhibit "B"; or

C. either Party may terminate this Agreement in accordance with Section 10.6.

2.2 Termination Costs. If a Party elects to terminate the Agreement pursuant to Section 2.1 above, the Generator shall pay all costs incurred (or committed to be incurred) by TSP, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Generator under this Agreement. In the event of termination by either Party, both Parties shall use commercially reasonable efforts to mitigate the damages and charges that they may incur as a consequence of termination. The provisions of the Sections 2.2 and 2.3 shall survive termination of the Agreement.

2.3 Disconnection. Upon termination of this Agreement, the Parties will disconnect the GIF from the TIF in accordance with Good Utility Practice and all Applicable Laws and Regulations.

ARTICLE 3. REGULATORY FILINGS

3.1 Filing. The TSP shall file this executed Agreement with the appropriate Governmental Authority, if required. The Parties agree to assist one another and use all reasonable efforts in obtaining applicable approvals or making such filings as promptly as practicable. Any portions of this Agreement asserted by Generator to contain competitively sensitive commercial or financial information shall be filed by the TSP identified as "confidential" under seal stating, for the TSP's showing of good cause, that Generator asserts such information is confidential information and has requested such filing under seal. If requested by the TSP, Generator shall provide the TSP, in writing, with the Generator's basis for asserting that the information referred to in this Section 3.1 is competitively sensitive information, and the TSP may disclose such writing to the appropriate Governmental Authority.

3.2 Regulatory Approvals. Unless exempt, the TSP shall timely request ISO and all regulatory approvals necessary for it to carry out its responsibilities under this Agreement. Such approvals shall include any CCN required for the construction of the TIF.

ARTICLE 4. INTERCONNECTION FACILITIES ENGINEERING, PROCUREMENT, AND CONSTRUCTION

4.1 Options. The Generator shall select one of the following options (subsection A or subsection B) and include the selected option in Exhibit “B” for completion of the TIF:

A. The TSP shall design, procure, and construct the TIF, using Reasonable Efforts to complete the TIF by the In-Service Date reflected in Exhibit “B.” The TSP will utilize its own resources and will contract for additional resources, as reasonably necessary, to meet the In-Service Date. Such resources shall include, as the TSP believes is reasonable, use of other contractors, other equipment suppliers, other material suppliers, additional contract personnel, additional payments to contractors for expedited work, and premiums paid to equipment and material suppliers for expedited delivery. The TSP shall not be required to undertake any initiative which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, Applicable Laws and Regulations, or ERCOT Requirements. In the event the TSP reasonably expects that it will not be able to complete the TIF by the In-Service Date, the TSP will promptly provide written notice to the Generator and will undertake Reasonable Efforts to meet the earliest date thereafter.

B. (i) The TSP shall design, procure, and construct the TIF by the In-Service Date reflected in Exhibit “B.” The Parties acknowledge that the In-Service Date was either agreed upon through good faith negotiations or designated by the Generator upon failure of the Parties to agree. In the process of negotiating the In-Service Date, Generator will request a date upon which it reasonably expects it will be ready to begin use of the TIF and upon which it reasonably expects to begin doing so. Any date designated by the Generator shall in no event be less than fifteen months from the date that all conditions of Sections 4.2 and 4.3 have been satisfied. The designated In-Service Date will be extended day for day for each day that the ISO refuses to grant clearances to install equipment. If the TSP fails to complete the TIF by the In-Service Date reflected in Exhibit “B,” the TSP shall pay the Generator liquidated damages in accordance with this Section 4.1.B.

(ii) The Parties agree that actual damages to the Generator, in the event the TIF are not completed by the In-Service Date, may include Generator’s fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. The Parties agree that, because of such uncertainty, any liquidated damages paid by the TSP to the Generator shall be an amount equal to $\frac{1}{2}$ of 1% of the actual cost of the TIF, per day. However, in no event shall the total liquidated damages exceed 20% of the actual cost of the TIF. The Parties agree that such liquidated damages are less than the Generator’s actual damages. The Parties agree that the foregoing payments will be made by the TSP to the Generator as just compensation for the damages caused to the Generator, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this Agreement.

(iii) The TSP shall apply to have the full costs of the TIF included in TCOS. If the PUCT issues a final, appealable order excluding from TCOS any portion of the TIF costs, including higher contractor and vendor costs due to liquidated damage provisions in those contracts and insurance costs to cover liquidated damages, which costs may have been reasonably incurred but which the PUCT finds should not be recovered through TCOS, the Generator shall reimburse the TSP for such costs in an amount not to exceed the difference between the TSP’s estimate of the cost of the TIF under section 4.1.A and the TSP’s estimate of the cost of the TIF

under Section 4.1.B as reflected in Exhibit “C.” Such costs shall be estimated using Good Utility Practice.

(iv) No liquidated damages shall be paid to Generator if the Generator is not ready to commence use of the TIF for the delivery of power to the Plant for Trial Operation or export of power from the Plant on the In-Service Date, unless the Generator would have been able to commence use of the TIF for the delivery of power to the Plant for Trial Operation or export of power from the Plant but for TSP’s delay.

(v) If the In-Service Date has been designated by the Generator upon a failure of the Parties to agree on the In-Service Date, the TSP may, at its option, require the Generator to subcontract with the TSP for all or part of the design, procurement and construction of the TIF in accordance with the TSP’s standard subcontractor agreements. In such event, the TSP shall be subject to the payment of liquidated damages to the Generator only if the In-Service Date is not met solely due to the TSP’s failure to complete the portion of the TIF for which the TSP has retained responsibility. It is the intent of this subsection to give the TSP full control of the contents and quality of the TIF. To the extent the Generator acts as a subcontractor to the TSP, the following will apply: 1) The Generator shall engineer, procure equipment, and construct the TIF (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the TSP; 2) In its engineering, procurement and construction of the TIF, the Generator shall comply with all requirements of law to which the TSP would be subject in the engineering, procurement or construction of the TIF; 3) The TSP shall review and approve the engineering design, acceptance tests of equipment, and the construction of the TIF; 4) The TSP shall have the right to approve and accept for operation the TIF in accordance with the standards and specifications provided in advance by the TSP, such approval and acceptance shall not be unreasonably withheld, conditioned, or delayed; 5) Should any phase of the engineering, equipment procurement, or construction of the TIF, including selection of subcontractors, not meet the standards and specifications provided by the TSP, and therefore be deemed unacceptable, then the Generator shall be obligated to remedy that portion of the TIF or selection of subcontractors that is deemed unacceptable, the TSP’s approval of the Generator’s selection of subcontractors will not be unreasonably withheld, conditioned or delayed; and 6) Once the TIF is accepted for operation by the TSP, then the TSP shall reimburse the Generator for the reasonable and necessary costs incurred by the Generator to complete the TIF, not to exceed the amount specified in the subcontract. Such reimbursement shall be made within thirty days after receipt of the invoice, unless otherwise agreed to by the Parties.

4.1.1 Additional Notices to Proceed and Security. In addition to the conditions and the Parties’ obligations under Section 4.2 and Section 4.3, the TSP’s obligations under this Agreement are made expressly subject to the Generator providing the written authorizations and security in the manner and amounts required under Attachment 1 to Exhibit “B.”

4.2 Equipment Procurement. If responsibility for construction of the TIF is borne by the TSP, then the TSP shall commence design of the TIF and procure necessary equipment within a reasonable time after all of the following conditions are satisfied:

A. The TSP has completed the Facilities Study pursuant to the Facilities Study Agreement;

B. The TSP has received written authorization to proceed with design and procurement from the Generator by the date specified in Exhibit “B”; and

C. The Generator has provided security to the TSP in accordance with Section 8.3 by the dates specified in Exhibit “B.”

4.3 Construction Commencement. The TSP shall commence construction of the TIF as soon as practicable after the following additional conditions are satisfied:

A. Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

B. Necessary real property rights, if any, have been obtained;

C. The TSP has received written authorization to proceed with construction from the Generator by the date specified in Exhibit “B”; and

D. The Generator has provided security to the TSP in accordance with Section 8.3 by the dates specified in Exhibit “B.”

4.4 Work Progress. The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. If, at any time, the Generator becomes aware that the completion of the TIF will not be required until after the specified In-Service Date, the Generator will promptly provide written notice to the TSP of a new, later In-Service Date. Generator will similarly provide written notice of any anticipated delays with respect to Generator providing the required notices to proceed and corresponding security as set forth in Attachment 1 to Exhibit “B.”

4.5 Identification of Qualified Scheduling Entity. Generator shall supply notification to the TSP identifying its Qualified Scheduling Entity (“QSE”) ninety (90) days prior to the In-Service Date, and Generator shall supply notification to the TSP sixty (60) days prior to any changes in QSE, thereafter.

4.6 Conditions Precedent Delay. To the extent this Agreement incorporates a specified In-Service Date and the Generator fails to satisfy conditions precedent under Sections 4.1.1, 4.2 and 4.3 so that the TSP may meet the In-Service Date, the Parties will negotiate in good faith to establish a new schedule for completion of the TIF, and the In-Service Date and the Scheduled Commercial Operation Date identified in Exhibit “B” shall be extended accordingly.

ARTICLE 5. FACILITIES AND EQUIPMENT

5.1 Information Exchange. The Parties shall exchange information and mutually agree upon the design and compatibility of the Parties’ interconnection facilities. The Parties shall work

diligently and in good faith to make any necessary design changes to ensure compatibility of the GIF to the TSP System.

5.2 GIF Construction. Generator agrees to cause the GIF to be designed and constructed in accordance with Good Utility Practice, ERCOT Requirements and the National Electrical Safety Code in effect at the time of construction. Within one-hundred and twenty (120) days after Commercial Operation, unless the Parties agree on another mutually acceptable deadline, the Generator shall deliver to the TSP the following “as-built” drawings, information and documents for the GIF: a one-line diagram, a site plan showing the Plant and the GIF, plan and elevation drawings showing the layout of the GIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Generator’s main-power transformers, the facilities connecting the Plant to the main power transformers and the GIF, the impedances (determined by factory tests) for the associated main power transformers and the generators, and the impedance of any transmission voltage lines that are part of the GIF.

5.3 TIF Construction. The TSP agrees to cause the TIF to be designed and constructed in accordance with Good Utility Practice, ERCOT Requirements and the National Electrical Safety Code in effect at the time of construction.

5.4 Equipment Changes. For facilities not described in Exhibit “C,” if either Party makes equipment changes to the Plant, the GIF, the TIF or the TSP System which it knows will affect the operation or performance of the other Party’s interconnection facilities, the Parties agree to notify the other Party, in writing, of such changes. Such changes shall be made in accordance with ERCOT Requirements and coordinated between the Parties.

5.5 Metering, Telemetry and Communications Requirements.

A. Metering and telemetry of data will be accomplished in accordance with ERCOT Requirements. The specific metering, telemetry and communications equipment to be installed and data to be telemetered are described in Exhibit “C.”

B. At the Point of Interconnection, the metering and telemetry equipment shall be owned by the TSP. However, the TSP shall provide the Generator with metering and telemetry values in accordance with ERCOT Requirements.

C. A minimum set of inputs to the telemetry equipment are specified in Exhibit “C.” Additional sets of inputs may be subsequently mutually agreed upon.

D. The TSP will notify the Generator at least five (5) working days in advance of any planned maintenance, inspection, testing, or calibration of the metering equipment, unless otherwise agreed to in writing. The Generator, or its designated representative, shall have the right to be present for these activities and to receive copies of any documents related to the procedures and results.

E. Prior to the connection of the GIF to the TIF, acceptance tests will be performed by the owning Party to ensure the proper functioning of all metering, telemetry and communications