

MEMORANDUM

TO: MEMA Members

DATE: June 22, 2009

RE: MISO Module E Planning Resource Credit Confirmation Template

As you may recall, the Mid-Continent Energy Marketers Association (“MEMA”) recently provided a template confirmation for consideration by members when conducting Midwest Independent Transmission System Operator, Inc. (“MISO”) Aggregate Planning Resource Credit (“APRC”) transactions (“MEMA Confirmation”) pursuant to the MEMA Capacity and Energy Tariff (“MEMA Tariff”).¹ MEMA recently received several inquiries from members regarding the differences between the MEMA Confirmation and the MISO Aggregate Planning Resources Credit Transaction Confirmation Version 1.0 (“EEI Confirmation”) published by the Edison Electric Institute (“EEI”).² The purpose of this memorandum is to provide an overview of the differences between these documents.

Differences between the MEMA and EEI APRC Confirmation Documents

- **Governing Document References:** The MEMA Confirmation uses the term “Tariff” in reference to the MEMA Tariff. In contrast, the EEI Confirmation uses the phrase “Master Agreement” in referring to the EEI Master Power Purchase and Sales Agreement (“EEI Master Agreement”). In addition, the respective documents contain references to specific provisions within each governing document. These specific references are not the same in the respective documents due to the inherent differences between the MEMA Tariff and the EEI Master Agreement.
- **Payment Terms:** Billing and payment under the MEMA Confirmation are governed by Article Seven of the MEMA Tariff (i.e., payment due the month following delivery). In contrast, the EEI Confirmation provides three options regarding payment terms. The default option under the EEI Confirmation requires the seller to invoice the buyer within 5 business days after delivery, with payment due from buyer

¹ The MEMA Confirmation was deemed approved by the MEMA Board of Directors on March 13, 2009, and subsequently provided to all members via email on May 4, 2009. The MEMA Confirmation is also available in the “documents” section of the MEMA website (<https://www.memarketers.org>).

² The EEI Confirmation is available on the EEI website at: <http://www.eei.org/ourissues/ElectricityGeneration/Pages/Products.aspx>.

within 5 business days after invoice receipt.³ However, the parties to a transaction may elect another payment option if this default is not desired.⁴

- Seller's Failure to Deliver: The MEMA Confirmation and EEI Confirmation contain slightly different language in the respective sections of each document addressing remedies resulting from a seller's failure to deliver APRCs. The differences are as follows:
 - In subsection (iii) of the first sentence of the first paragraph, the MEMA Confirmation states "(iii) Seller fails to cure such failure...." In contrast, the EEI Confirmation document states "(iii) Seller fails to deliver the Product not previously delivered by the Transfer Deadline...." Although the documents utilize different language, both convey the same principle that a condition to holding a seller liable for Financial Settlement Charges relating a failure to deliver is the provision of notice and an opportunity to cure.
 - In subsection (ii) of the second sentence of the first paragraph, the EEI Confirmation states "(ii) no Financial Settlement Charges for the Quantity that Seller failed to deliver, whether as a result of Buyer's purchase of replacement Product or otherwise, then Buyer shall.... The underlined language, merely clarifying why a buyer might not be assessed a Financial Settlement Charge due to a seller's failure to deliver, is not contained in the MEMA Confirmation.
 - At the end of the second paragraph, the EEI Confirmation states "; provided, however that Seller shall not be liable for any Financial Settlement Charges assessed to Buyer (either directly or through contractual obligation) resulting from Seller's failure to deliver all or part of the Product." This language, merely clarifying the major difference between the first and second paragraphs of this section, is not contained in the MEMA Confirmation.

³ See, EEI Confirmation at "Special Conditions," Section 2, Option 1.

⁴ The other payment options under the EEI Confirmation are: (i) payment in accordance with the Article Six of the EEI Master Agreement, which, consistent with Article Seven of the MEMA Tariff, requires payment the month following delivery (*see* EEI Confirmation at "Special Conditions," Section 2, Option 2); and (ii) allowing the parties to establish an agreed upon schedule for payment (*see* EEI Confirmation at "Special Conditions," Section 2, Option 3).

- At the beginning of the third paragraph, the EEI Confirmation states “[i]n any case of a failure by Seller to deliver all or part of the Product by the Transfer Deadline....” This language, merely clarifying that the third paragraph is intended to apply to all instances where a seller fails to deliver, is not contained in the MEMA Confirmation.

- Buyer’s Failure to Receive: The MEMA Confirmation and EEI Confirmation contain a non-substantive language difference in subsection (iii) of the first sentence of the first paragraph of the respective sections in each document addressing remedies resulting from a buyer’s failure to take deliver. Specifically, the MEMA Confirmation states “(iii) Buyer fails to cure such failure....” In contrast, the EEI Confirmation states “(iii) Buyer fails to receive the Product not previously received by the Transfer Deadline....” Although the documents utilize different language, both convey the same principle that a condition to holding a buyer liable for the full contract price relating to a failure to take deliver is the provision of notice and an opportunity to cure.