

## **12. Nature of Distribution Service**

### **12.1 Distribution Provider Responsibilities**

The Distribution Provider will plan, construct, operate and maintain its Distribution System in accordance with Good Utility Practice in order to provide the Distribution Customer with Distribution Service over the Distribution Provider's Distribution System. The Distribution Provider shall include the Distribution Customer's Generation, Firm Charging Distribution Service or Wholesale Distribution Load in its Distribution System planning and shall, consistent with Good Utility Practice, endeavor to construct and place into service sufficient Distribution System facilities to deliver the Distribution Customer's Generation to the ISO Grid or the Distribution Customer's power to serve its Wholesale Distribution Load or provide Firm Charging Distribution Service on a basis comparable to the Distribution Provider's delivery of power to the ISO Grid or to the Distribution Provider's Power Customers.

### **12.2 Term**

The minimum term for Distribution Service shall be one year, but a Service Agreement for Wholesale Distribution Service for a Resource taking Firm Charging Distribution Service shall have a ten-year minimum term with early termination rights as discussed in Section 12.8.

### **12.3 (Not Used)**

### **12.4 (Not Used)**

### **12.5 Service Agreements**

The Distribution Provider shall offer a standard form Service Agreement for Wholesale Distribution Service (Attachment A) to an Eligible Customer when it submits a Completed Application for Distribution Service except in the case of a

Resource processed for interconnection under Attachment I to the Tariff, in which case the generator interconnection agreement and Service Agreement for Wholesale Distribution Service shall be offered concurrently. Executed Service Agreements for Wholesale Distribution Service that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations.

**12.6 (Not Used)**

**12.7. Load Shedding and Curtailment of Distribution Service**

**12.7.1 Procedures**

Prior to the Service Commencement Date, the Distribution Provider and the Distribution Customer shall establish Load Shedding and Curtailment procedures pursuant to the applicable Attachment B or Attachment C of the Tariff with the objective of responding to contingencies on the Distribution System. The Parties will implement such programs during any period when the Distribution Provider determines that a Distribution System contingency exists and such procedures are necessary to alleviate such contingency. The Distribution Provider will notify the Distribution Customer in a timely manner of the existence of such contingency.

**12.7.2 Distribution Constraints**

During any period when the Distribution Provider determines that a constraint exists on all or a portion of its Distribution System, and such constraint may impair the reliability of its Distribution System, the Distribution Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Distribution Provider's Distribution System.

**12.7.3 Curtailments of Scheduled Deliveries**

If a constraint on the Distribution Provider's Distribution System cannot be relieved through the implementation of other procedures and the Distribution Provider determines that it is necessary to Curtail ISO-scheduled deliveries, the Parties shall Curtail such ISO schedules in accordance with the applicable Attachment B or Attachment C of the Tariff. As-Available Charging Distribution Service will be curtailed before any other Distribution Service under this Tariff and before retail distribution service.

**12.7.4 Allocation of Curtailments to Firm Loads**

The Distribution Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieves the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be proportionately shared by the Distribution Provider and Distribution Customer. The Distribution Provider shall not direct the Distribution Customer to Curtail ISO schedules to an extent greater than the Distribution Provider would Curtail the Distribution Provider's ISO schedules under similar circumstances. Notwithstanding the foregoing, if a portion of the Distribution System is not capable of serving all retail, Wholesale Distribution Load, and Charging Capacity receiving Firm Charging Distribution Service in an area due an abnormal or emergency condition, the Distribution Provider may limit Firm Charging Distribution

Service, to the extent operationally feasible, in order to protect human health and safety.

**12.7.5 Load Shedding**

To the extent that a system contingency exists on the Distribution Provider's Distribution System and the Distribution Provider determines that it is necessary for the Distribution Provider and the Distribution Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the applicable Attachment B or Attachment C of the Tariff. Notwithstanding the foregoing, Charging Capacity receiving Firm Charging Distribution Service may be shed before retail and Wholesale Distribution Load to the extent operationally feasible, in order to protect human health and safety.

**12.7.6 System Reliability**

Notwithstanding any other provisions of this Tariff, the Distribution Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Distribution Service without liability on the Distribution Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Distribution Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Distribution Provider's Distribution System or on any other system(s) directly or indirectly interconnected with the Distribution Provider's Distribution System, the Distribution Provider, consistent with Good Utility Practice, also may Curtail Distribution

Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to distribution facilities, or (iii) expedite restoration of service. The Distribution Provider will give the Distribution Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Distribution Service will not be unduly discriminatory relative to the Distribution Provider's use of the Distribution System. The Distribution Provider shall specify in the Service Agreement the rate treatment and all related terms and conditions applicable in the event that the Distribution Customer fails to respond to established Load Shedding and Curtailment procedures.

## **12.8 Conditions Applicable to Firm Charging Distribution Service Customers**

### **12.8.1 Termination of Service Agreement Prior to Resource Commercial Operation Date**

**12.8.1.1** If a Distribution Customer selecting Firm Charging Distribution Service will be paying a Demand Charge Rate and elects to terminate its Service Agreement for Wholesale Distribution Service prior to the Commercial Operation of its Resource, then within twelve (12) months of the termination, Distribution Provider will issue to the Distribution Customer a final accounting of the actual costs spent or irrevocably committed, which may include, but not limited to, cancellation charges and removal costs. The Distribution Provider shall refund to the Distribution Customer any amount by which the actual payment by the Distribution Customer exceeds actual costs within thirty (30) calendar days of the issuance of such final accounting; or, in the event the actual

costs exceed the Distribution Customer's payments received by the Distribution Provider, then the Distribution Customer shall pay to the Distribution Provider any amount by which the actual costs exceed the payment by the Distribution Customer within thirty (30) calendar days of the issuance of such final accounting. The Distribution Customer shall also be responsible for costs of any applicable tax consequences incurred by Distribution Provider.

**12.8.1.2** If a Distribution Customer selecting Firm Charging Distribution Service will be paying for Higher-of Facilities and elects to terminate its Service Agreement for Wholesale Distribution Service prior to the Commercial Operation of its Resource, Distribution Provider will issue to the Distribution Customer a final accounting of the actual costs spent or irrevocably committed, which may include, but not limited to, cancellation charges and removal costs. The Distribution Provider shall refund to the Distribution Customer any amount by which the actual payment by the Distribution Customer exceeds actual costs within thirty (30) calendar days of the issuance of such final accounting; or, in the event the actual costs exceed the Distribution Customer's payments received by the Distribution Provider, then the Distribution Customer shall pay to the Distribution Provider any amount by which the actual costs exceed the payment by the Distribution Customer within thirty (30) calendar days of the issuance of such final accounting. The Distribution Customer shall

indemnify the Distribution Provider for the costs of any applicable tax consequences incurred by Distribution Provider.

**12.8.1.3** If a Distribution Customer selecting Firm Charging Distribution Service elects to terminate its Service Agreement for Wholesale Distribution Service prior to the Commercial Operation of its Resource, the Distribution Provider shall use commercially reasonable efforts to mitigate the amounts spent or committed.

**12.8.2 Impact of Suspension of Work Under GIA Prior to Resource Commercial Operation Date**

A Distribution Customer selecting Firm Charging Distribution Service may suspend work under its Service Agreement for Wholesale Distribution Service for a period lasting no more than twelve (12) months beyond the agreed upon Commercial Operation Date in the generator interconnection agreement (GIA), coincident with any suspensions under GIA § 5.16, which permits suspensions for up to three (3) years beyond the agreed upon Commercial Operation Date in the GIA.

**12.8.2.1** If a Distribution Customer selecting Firm Charging Distribution Service: 1) will be paying a Demand Charge Rate; 2) elects to suspend work on its interconnection service under GIA § 5.16; and 3) such suspension under GIA § 5.16 lasts for more than twelve (12) months beyond the agreed upon Commercial Operation Date in the GIA, the Distribution Customer may, at the conclusion of the twelve months either: 1) forfeit its right to Firm Charging Distribution Service (it will be

provided As-Available Service if its Resource enters Commercial Operation), in which case the Distribution Customer will be billed for amounts due or refunded amounts owed in accordance with the final accounting procedures specified in Section 12.8.1 for the Distribution System Upgrades required to provide Firm Charging Distribution Service; or 2) unsuspend work on the Distribution System Upgrades and receive Firm Charging Distribution Service if its Resource enters Commercial Operation. (If the Resource fails to enter Commercial Operation, Section 12.8.1.1 shall apply).

**12.8.2.2** If a Distribution Customer selecting Firm Charging Distribution Service: 1) will be paying a Higher-of Facilities; 2) elects to suspend work on its interconnection service under GIA § 5.16; and 3) such suspension under GIA § 5.16 lasts for more than twelve (12) months beyond the agreed upon Commercial Operation Date in the GIA, the Distribution Customer may: 1) forfeit its right to Firm Charging Distribution Service (it will be provided As-Available Service if its Resource enters Commercial Operation) in which case the Distribution Customer will be billed for amounts due or refunded amounts owed in accordance with the final accounting procedures specified in Section 12.8.1 for the Distribution System Upgrades required to provide Firm Charging Distribution Service; or 2) unsuspend work on the Higher-of Facilities. (If the Distribution Customer's Resource fails to enter Commercial Operation, Section 12.8.1.2 shall apply).



**12.8.2.3 Right to Suspend does not extend to upgrades Shared by Multiple Distribution Customers**

Distribution System Upgrades required to provide Firm Charging Distribution Service common to multiple generating facilities, and to which the Distribution Customer's right of suspension shall not extend, consist of Distribution System Upgrades identified for:

- i. Generating facilities which are the subject of all Interconnection Requests made after to the Distribution Customer's Interconnection Request; or

Generating facilities which are the subject of Interconnection Requests within the Queue Cluster where the Distribution Customer's request for Firm Charging Distribution Service is assessed.**12.8.3 Termination of Service Agreement after Resource Commercial Operation Date During Initial 10-Year Term**

A Firm Charging Distribution Service Distribution Customer who is responsible for up-front financing the costs of Distribution System Upgrades may terminate its Service Agreement for Wholesale Distribution Service after the Commercial Operation Date of a Resource during the initial ten-year term of Service Agreement for Wholesale Distribution Service, subject to the following conditions:

**12.8.3.1** A Distribution Customer paying a Demand Charge Rate is not liable to pay such Demand Charge Rate for the remaining balance of the 10-year term of its Service Agreement for Wholesale Distribution Service after termination. As to amounts paid for up-front financing the costs of any Distribution System Upgrades, any amount that has not yet

been returned under the five-year levelized repayment with interest commitment will not be returned and Distribution Customer will be responsible for any applicable tax consequences incurred by the Distribution Provider, although if the termination does not coincide with the end of a quarter, amounts owing for the period of the quarter prior to the termination date will be pro-rated and returned.

**12.8.3.2** A Distribution Customer paying the cost of Higher-of Facilities shall not be entitled to reimbursement for such facilities.

**12.8.4 Reduction in Contract Demand After Resource Commercial Operation Date**

Charges applicable to a Distribution Customer seeking to reduce its Contract Demand after Commercial Operation Date of a Resource during the initial ten-year term of the Service Agreement for Wholesale Distribution Service:

**12.8.4.1** A Distribution Customer paying a Demand Charge Rate shall continue to pay its Demand Charge Rate based on its original Contract Demand for the remaining balance of the 10-year term of its Service Agreement for Wholesale Distribution Service. After the initial ten years, if the Service Agreement for Wholesale Distribution Service is renewed, the Distribution Customer may reduce its Contract Demand.

**12.8.4.2** A Distribution Customer paying the cost of Higher-of Facilities shall not be entitled to reimbursement for such facilities or reduction in the associated monthly charge for operations and maintenance

if it seeks to reduce its Contract Demand during the initial ten-year term of its Service Agreement for Wholesale Distribution Service.

**12.8.5 Failure to Fully Utilize Contract Demand After Resource Commercial Operation Date**

**12.8.5.1** Subject to FERC acceptance of an amended Service Agreement, the Distribution Provider may reduce the Contract Demand of the Distribution Customer with Firm Charging Distribution Service if the Distribution Customer does not utilize the full Contract Demand set forth in the Service Agreement for Wholesale Distribution Service for a period of two consecutive years or more following the Service Commencement Date, except for any period when Distribution Customer does not utilize the full Contract Demand due to the occurrence of a Force Majeure event or default of Distribution Provider under the Service Agreement. If the Distribution Provider opts to reduce the Contract Demand:

**12.8.5.2.** For a Distribution Customer paying a Demand Charge Rate, such a reduction in Contract Demand would result in a reduction (or elimination) of the Demand Charge and no termination charge would be applied.

**12.8.5.3** For a Distribution Customer paying the costs of Higher-of Facilities, such a reduction would entitle the Distribution Customer to a pro rata (time-based) refund of the cost of the Higher-of Facilities. Such refund shall not be available if a reduction occurs more than 10 years after the Resource Commercial Operation Date.

### **12.9. As-Available Charging Distribution Service**

A Distribution Customer that takes As-Available Charging Distribution Service is subject to the limitations on Distribution Service as specified in the Tariff and its Service Agreement for Wholesale Distribution Service. A Distribution Customer may terminate As-Available Charging Distribution Service upon notice to the Distribution Provider in accordance with the Service Agreement for Wholesale Distribution Service.

### **12.10 Scheduling of Distribution Service**

Separate schedules for Distribution Service shall not be required under this Tariff. In transmission schedules submitted to the ISO, the Distribution Customer shall include its Generation, Charging Capacity, or Wholesale Distribution Load, if required to do so under the ISO Tariff, including applicable Distribution System real power losses, for which Distribution Service is being provided pursuant to this Tariff.

### **12.11 Self Provision of Ancillary Services**

Nothing in this Tariff is intended to limit a Distribution Customer in the self provision or sale of Ancillary Services, to the extent the Distribution Customer is eligible to self provide or sell Ancillary Services under the terms of the ISO Tariff or contracts, except when emergency conditions preclude such provision of ancillary services. Except to the extent that a Distribution Customer may be called upon to provide reactive power support consistent with the operations of the Distribution Provider, a Distribution Customer must maintain power factor at the interface between the Distribution Customer's facilities and the Distribution Provider's facilities pursuant to Section 20.4.

### **12.12 Conflict With ISO Tariff**

If a Distribution Customer identifies a conflict between this Tariff and the ISO Tariff, the Distribution Provider and the Distribution Customer shall make good-faith efforts to resolve the conflict. If the Parties are unable to informally resolve the conflict, the Parties may use the Dispute Resolution Procedures set forth in Section 9 of this Tariff.

### **12.13 Conflicting Operating Instructions**

In the event a Distribution Customer receives conflicting operating instructions from the ISO, one or more Participating TO(s), or the Distribution Provider, and, if human safety would not knowingly be jeopardized nor electric facilities subject to damage while the Distribution Customer seeks to reconcile the conflict with the appropriate ISO, Participating TO and/or Distribution Provider employees before acting, the Distribution Customer should attempt a reconciliation. Otherwise, the Distribution Customer shall adhere to ISO Tariff provision 4.2 and follow the ISO's instructions. In no event shall a Distribution Customer be required to follow operating instructions from the ISO if following those instructions would knowingly jeopardize human safety.

### **12.14 Changes in Service Requests for Wholesale Distribution Loads**

Under no circumstances shall a Distribution Customer serving Wholesale Distribution Load's decision to change its requested Distribution Service in any way relieve such Distribution Customer of its obligation to pay the costs of facilities constructed by the Distribution Provider and charged to the Distribution Customer as reflected in the Service Agreement. However, the Distribution Provider must treat any requested change in Distribution Service by a Distribution Customer serving Wholesale Distribution Load in a non-discriminatory manner.

### **12.15 Annual Generation or Wholesale Distribution Load and Information Updates**

The Distribution Customer shall provide the ISO and the Distribution Provider with annual updates of Generation or Wholesale Distribution Load forecasts consistent with those included in its Application for Distribution Service under the Tariff. The Distribution Customer also shall provide the Distribution Provider with timely written notice of material changes in any other information provided in its Application relating to the Distribution Customer's Generation or Wholesale Distribution Load or other aspects of its facilities or operations affecting the Distribution Provider's ability to provide reliable service.