

EXHIBIT 4

FORM OF COST-OF-SERVICE AGREEMENT

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COST-OF-SERVICE AGREEMENT

This COST-OF-SERVICE AGREEMENT (“COS Agreement”) is made as of the ___ day of _____, 200_, between _____ (“Owner”), a _____ limited liability company, _____, a _____ limited liability company (“Agent”), acting as agent for Owner and ISO NEW ENGLAND INC. (“ISO”).

RECITALS

- A. Owner is the owner of _____ megawatt (____ MW) electrical generating Unit(s), together with appurtenant facilities and structures, located at _____ and called the _____ (the “Resource”).
- B. Owner is the direct wholly-owned subsidiary of Agent, which is a Market Participant in the New England Markets. Owner operates the Resource in accordance with the ISO New England Filed Documents and the ISO New England System Rules. Agent causes Energy, Capacity and Ancillary Services from the Resource to be bid for sale into the New England Markets on behalf of Owner.
- C. ISO is the Regional Transmission Organization for New England and is responsible for the operation of the New England Control Area to ensure short-term reliability and the administration of the New England Markets.
- D. ISO has concluded that the Resource will be needed for reliability purposes during the Term to relieve transmission congestion and expects the Resource will be required to run out-of-economic merit during transmission constraints.
- E. The Parties have agreed (i) that Owner or Agent shall cause an FPA Section 205 proceeding to be initiated to establish the Fixed-Cost Charge and (ii) to enter into this COS Agreement for Supplying Energy and Ancillary Services from the Resource into the New England Markets and thereby (x) set the rate by which Owner shall receive its fixed costs for the Resource from the Participants and (y) govern how the Agent shall cause bids to be made such that Owner receives from the Participants its variable costs for such Supply, during the Term.

NOW THEREFORE, in consideration of the agreements and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound by this COS Agreement as of the Effective Date, the Parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION

1.1 Definitions. Except for the terms defined below and in the attached Schedules, capitalized terms shall be as defined in Market Rule 1.

1.1.1 “Additional Expenditures” shall mean costs associated with O&M Items in excess of the O&M Expenditures.

1.1.2 “Affiliate” of a Party means any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For purposes of this definition, control means the power to direct or cause direction of, directly or indirectly, the management or policies of the specified entity, whether through ownership of voting securities, partnership, or limited liability company interests, by contract or otherwise.

1.1.3 “Affiliated Resource” shall have the meaning set forth in Section 3.1.2.

1.1.4 “Availability” means the capability of a Resource, in whole or in part, at any given time, to produce Energy, Capacity, or Ancillary Services in accordance Accepted Electric Industry Practice that can be Supplied, and “Available” shall be construed accordingly.

1.1.5 “Availability Deficiency Factor” shall have the meaning set forth in Section 3.4.2(a).

1.1.6 “Business Day” means any day Monday through Friday, excluding U.S. federal bank holidays.

1.1.7 “Capacity” means electrical generating capacity, measured in MWs.

1.1.8 “Cost Reporting Procedures” shall have the meaning set forth in Section 3.2.1.

1.1.9 “Effective Date” shall have the meaning set forth in Section 2.1.1.

1.1.10 “Extension Term” shall have the meaning set forth in Section 2.1.2.

1.1.11 “Fixed-Cost Charge” shall have the meaning set forth in Section 3.3.

1.1.12 “Force Majeure Event” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment not due to lack of proper care or maintenance, any order, regulation or restriction imposed by a Governmental Authority, or any other cause beyond a Party’s control.

1.1.13 “Forced Outage” means any outage of the Resource or Unit (other than a Planned Outage) that (i) is taken consistent with Accepted Electric Industry Practice and applicable NERC criteria and (ii) fully or partially curtails the Resource's or a Unit's ability to Supply Energy, Capacity and/or Ancillary Services.

1.1.14 “FPA” means the Federal Power Act.

1.1.15 “Governmental Authority” means the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government.

1.1.16 “Initial Term” shall have the meaning set forth in Section 2.1.1.

1.1.17 “Law” means any law, treaty, code, rule, regulation, or order or determination of an arbitrator, court or other Governmental Authority, or any license, permit, certificate authorization, qualification, or approval granted by a Governmental Authority to the extent binding on a Party or any of its property.

1.1.18 “Maximum Net Dependable Capacity” is set forth in Schedule 4.

1.1.19 “Monthly Reports” shall have the meaning set forth in Section 4.1.1.

1.1.20 “Month” means the period beginning at 12:00 a.m. on the first day of the calendar month and ending at 12:00 a.m. of the first day of the next succeeding calendar month.

1.1.21 “Monthly Reports” shall have the meaning set forth in Section 4.1.1.

1.1.22 “Monthly Settlement” means the monthly settlement process set forth in the ISO New England Manuals.

1.1.23 “Notice of Additional Expenditures” shall have the meaning set forth in Section 5.2.2(e).

1.1.24 “Notice of Forced Outage” shall have the meaning set forth in Section 5.2.2(b).

1.1.25 “Notice of Shut-down” shall have the meaning set forth in Section 5.2.2(c).

1.1.26 “O&M Expenditures” means the expected expenditures during the Term for fixed O&M Items, as set forth in Owner’s Exhibit NB-2, schedule 2, line 13, as filed with FERC, as it may be modified pursuant to an applicable Commission final order.

1.1.27 “O&M Items” mean fixed O&M costs of repairs of the Resource and replacements of any part of the Resource to correct or avoid any impairment of the capability of the Resource to Supply Energy, Capacity and/or Ancillary Services, which Owner expenses during the same calendar year in which it is performed, in accordance with Owner’s accounting practices.

1.1.28 “Owner” shall have the meaning set forth in the preamble of this Agreement and, where applicable and appropriate, its assignee and/or designee.

1.1.29 “Party” means either the ISO or Owner and/or Agent as the context requires, and “Parties” means ISO or Owner and/or Agent, as the context requires.

1.1.30 “Penalty Period” has the meaning set forth in Section 3.4.2(b).

1.1.31 “Planned Outage” means a planned interruption, in whole or in part, in the electrical output of a Resource or individual Unit to permit Owner to perform maintenance and repair of the Resource, including O&M Items.

1.1.32 “Resource” means Unit(s) _____ (and _____) and appurtenant facilities and structures at the _____.

1.1.33 Requested MWs” shall have the meaning set forth in Section 3.4.

1.1.34 “Shut-down” shall have the meaning set forth in Section 5.2.2(c).

1.1.35 “Shut-down Date” shall have the meaning set forth in Section 5.2.2(g).

1.1.36 “Stipulated ICAP Revenue” shall have the meaning set forth in Section 3.1.2.

1.1.37 “Stipulated Marginal Cost” shall have the meaning set forth in Section 3.2.1.

1.1.38 “Stipulated Bid Cost” shall have the meaning set forth in Section 3.2.1.

1.1.39 “Stipulated Start-Up Cost” shall have the meaning set forth in Section 3.2.1.

1.1.40 “Stipulated No Load Cost” shall have the meaning set forth in Section 3.2.1.

1.1.41 “Supply” means to supply Energy, Capacity and/or Ancillary Services into the New England Markets and “Supplied” shall be construed accordingly.

1.1.42 “Term” shall mean either the Initial Term or any Extension Term.

1.1.43 “Unit” means one of the _____ electricity generating units constituting a part of the Resource.

1.1.44 “Unit Characteristics” shall have the meaning set forth in Section 3.2.

1.1.45 “Variable O&M” shall be the amount specified in Schedule 3.

1.2 Interpretation. In this Agreement, unless otherwise indicated or otherwise required by the context, the following rules of interpretation shall apply:

1.2.1 Reference to and the definition of any document (including this COS Agreement, ISO New England Filed Documents and the ISO New England System Rules) shall be deemed a reference to such document as it may be amended, supplemented, revised, or modified from time to time and any document that is a successor thereto.

1.2.2 The article and section headings, and other captions in this Agreement are for the purpose of reference only and do not limit or affect its meaning.

1.2.3 Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

1.2.4 Accounting terms used herein shall have the meanings given to them under generally accepted accounting principles within the United States consistently applied.

1.2.5 The headings used herein are for convenience and reference purposes only.

1.2.6 The term “including” when used herein shall be by the way of example only and shall not be considered in any way a limitation.

1.3 Construction. This Agreement has been drafted by both Parties and shall not be construed against any Party as the sole drafter.

ARTICLE 2 TERM

2.1 Term and Termination.

2.1.1 Initial Term. This Agreement shall be effective (the “Effective Date”) at the beginning of the operating hour ending at 1:00 a.m., _____, 200__ and shall terminate at the end of the operating hour beginning at 11:00 p.m., _____, 200__ (the “Initial Term”).

2.1.2 Option to Extend. This Agreement shall automatically extend each year for an additional one year term on each anniversary (an “Extension Term”) unless terminated in writing by the ISO upon notice given no later than 60 days prior to expiration of the Initial Term or any applicable Extension Term.

2.1.3 Relationship to Reliability Needs. The ISO's decision to terminate this Agreement pursuant to Sections 2.1.2 shall be deemed to represent the ISO's conclusion that the Resource is no longer needed for system reliability, and that the Shut-down of the Resource would not have a significant adverse effect on the reliability or operating characteristics of the system.

2.2 Termination. This Agreement may be terminated as follows:

2.2.1 ISO may terminate this Agreement at any time during the Initial Term or an Extension Term upon one hundred twenty (120) days written notice to Owner; and

2.2.2 This Agreement may be terminated as provided in Section 7.2.

2.3 Consequence of Termination or Expiration. The Parties acknowledge and agree that: (i) Owner is currently evaluating whether to either retire, mothball, decommission, or otherwise shut-down the Resource in total or one of its Units individually, on a permanent or seasonal basis (hereinafter referred to as "Shut-down") following termination or expiration of this COS Agreement; (ii) if Owner decides to Shut-down the Resource or a Unit, ISO agrees to cooperate with Owner and support Owner's application under Sections 18.4 and 18.5 of the Agreement for a Shut-down of the Resource upon termination or expiration of this COS Agreement, or, in the case of the Shut-down of a single Unit, upon the date of the Shut-down of such Unit, consistent with the terms of this COS Agreement.

2.4 Survival. Notwithstanding the termination of this COS Agreement, the Parties shall continue to be bound by the provisions of this COS Agreement which by their nature are intended to, and shall, survive such termination.

ARTICLE 3 MITIGATION

3.1 Market Transactions and Revenues. This Agreement imposes requirements on Owner with regard to the level at which the Resource is bid and compensated as provided below.

3.1.1 The Resource will not be subject to any bilateral agreements unless the ISO has been provided with a written copy of the proposed agreement at least 30 days in advance.

3.1.2 Any revenues (including from bilateral agreements, emissions credits, release of firm transportation arrangements, etc.) will be offset against payments made to the Resource under this Agreement. Unless otherwise agreed by the Parties, the ICAP revenues attributable to the Resource (the "Stipulated ICAP Revenue") will equal the total capacity revenues of all Affiliated Resources times the ratio of the Resource to all Affiliated Resources. "Affiliated Resources" are all Resources in the ISO Control Area owned by Owner's Affiliates.

3.1.3 This Agreement is in lieu of mitigation measure for the Resource under Section III.4.2.2 of Appendix A to Market Rule 1. Nothing herein shall preclude the ISO from otherwise applying any other provision of Appendix A or Appendix B to Market Rule 1 to Owner, any Affiliate of Owner, the Resource, or any other resources of Owner or any Affiliate of Owner that are subject to the Agreement.

3.2 Bidding by Owner. Owner shall cause Agent to bid for sale of Energy and Ancillary Services into the New England Markets from the Resource based on the Unit characteristics and operating parameters specified in Schedule 3 (the "Unit Characteristics"), using only Stipulated Bid Costs. The Stipulated Bid Costs charge shall be a self-adjusting formulary rate accepted by the Commission pursuant to an FPA Section 205 proceeding initiated by Owner or Agent updated monthly as provided below.

3.2.1 Stipulated Costs. Stipulated costs shall be determined using the applicable generating unit fossil fuel usage and related items for the applicable operating day, as reported to the ISO for market monitoring purposes, pursuant to the procedure set forth in "Reporting of Generating Unit Fuel Cost and Related Data for ISO New England Market Monitoring & Market Power Mitigation," www.iso-ne.com/market_monitoring/reporting_of_fuel_cost_and_related_data/ (the "Cost Reporting Procedures") as provided below. The form Owner shall use, as required by the Cost Reporting Procedures, is provided in Schedule 2. Capitalized terms used in the formulas below are defined in the Cost Reporting Procedures.

Stipulated Marginal Cost ("SMC") = (Fuel + O&M + Other) x kWh

Where:

Fuel = (Fuel Use for Generation x Fuel Index Price) + Fuel Cost Ancillaries

O&M = Variable O&M as specified in Schedule 3

Other = (SO₂ Allowance Adder + NO_x Allowance Adder + Operating Permit Adder)

Stipulated Bid Costs = Stipulated Marginal Cost + Stipulated Start-Up Cost + Stipulated No Load Cost

Where:

Stipulated Start-Up Cost = (Start-Up Fuel Use x Fuel Index Price) + Fuel Cost Ancillaries + Start-Up O&M + Start-Up Other

Stipulated No Load Cost = (No Load Fuel Use x Fuel Index Price) + Fuel Cost Ancillaries + No Load O&M + No Load Other

3.2.2 The "Fuel Index Price" shall mean the current daily price calculated by the ISO, using the third party data as specified on Schedule 1, applicable to the delivery point specified on Schedule 1.

3.3 Fixed Cost Payment. Owner shall be entitled to a fixed-cost charge for the Resource for each Month (the "Fixed-Cost Charge"), which ISO shall cause to be paid by Participants through the Monthly Settlement process for the New England Markets. The Fixed Cost Charge shall be the amount determined by the Commission pursuant to an FPA Section 205 proceeding initiated by Owner or Agent and shall include all allowable capacity costs and fixed O&M costs.

3.3.1 The Fixed-Cost Charge shall be reduced by credits, if any, for allowable Capacity sales allocable to the Resource.

3.3.2 Amounts received from the market in excess of the Stipulated Bid Costs from sales of Energy and Ancillary Services made from the Resource shall be credited back against the Fixed-Cost Charge, or, in the event that no Fixed-Cost Charge payment is then due, credited against the next Monthly Settlement following such determination.

3.4 Non-Performance Penalty. If a Resource fails to comply fully with a dispatch by the ISO and such failure is not due to a Force Majeure Event, the Resource shall be subject to a Non-Performance Penalty computed in accordance with this Section 3.4.

3.4.1 The monthly Non-Performance Penalty shall be the sum of the amounts applied for each Hour in the Month by multiplying (i) the Availability Deficiency Factor for the Hour by (ii) the Hourly Penalty Rate for the Resource as set forth on Schedule 4; provided that the Non-Performance Penalty for any Month shall not exceed the Fixed Cost Payment for the Month. For purposes of this calculation:

(a) an Availability Deficiency Factor shall be applied for each Hour of the Penalty Period as one minus the number determined by dividing (a) the MWh delivered to the New England Control Area (the “Delivered MWs”) for the hour in question by (b) the product of the MWs requested in the Dispatch Instruction and the percentage of the hour (up to 100%) that the Resource was subject to a Dispatch Instruction;

(b) the Penalty Period shall be the 72 hour period beginning at the time Owner fails to comply fully with a dispatch by the ISO, provided that if Owner in accordance with Section 5.2 had scheduled an outage to begin during the 72 hour period, the Penalty Period will terminate at the time the outage was scheduled to begin. The Requested MWs shall be reduced to eliminate the effect of any Force Majeure Event affecting deliveries during the Penalty Period.

3.4.2 For purposes of this Section 3.4, a Resource shall be deemed to be in full compliance with a Dispatch Notice if the Resource delivers (i) at least 97 percent of the Requested MW or (ii) not more than 2 MW less than the Requested MW.

ARTICLE 4 REPORTING AND SETTLEMENT

4.1 Cost Reporting.

4.1.1 Owner shall update in monthly filings with the ISO all of its cost data for the Resource in the form required by the ISO as set forth on Schedule 2 (the “Monthly Reports”). If Participant fails to provide updated information on a timely basis, payments will be made based on the information on file and adjusted after-the-fact when the form is provided. The ISO will give the Owner 30 days prior written notice of any change in the form and will update Schedule 2 accordingly.

4.1.2 The Operating Limits and Variable O&M charges applicable to the Resource during the Initial Term are set forth in Schedule 3 hereto. Except with respect to Variable O&M charges incurred by the Owner as a result of specific request of the ISO, such Operating Limits and Variable O&M charges shall be reestablished annually prior to the renewal as follows:

(a) The Owner shall provide the ISO with an updated Schedule 3 no earlier than 90 days and no later than 75 days day prior to the end of the Initial Term or any applicable Extension Term to be effective for the next Extension Term.

(b) On or before the sixtieth day prior to the end of the Initial Term or any Extension Term, if the ISO does not elect to terminate the Agreement, the ISO shall confirm in writing its acceptance of the revised Schedule 3.

(c) If the ISO does not agree to the revised Schedule, the Schedule in effect for that Term shall remain in effect during the Extension Term pending alternative dispute resolution in accordance with Appendix D to Market Rule 1.

4.2 Settlement. The Stipulated Bid Costs applicable to the Resource as determined in accordance with Section 3.2.1 shall be included in the calculation of Net Commitment Period Compensation (“NCPC”). All NCPC shall be paid in accordance with applicable ISO settlement procedures.

4.3 Books and Records; Audit Rights. ISO shall have the right, at any time upon reasonable notice, to examine at reasonable times the books and records of Owner and Agent to the extent necessary to audit and verify the accuracy of all reports, statements, invoices, charges, or computations pursuant to this Agreement. The Parties acknowledge and agree that the ISO may perform audits of the monthly reports as well as a final audit of all expenses incurred under this Agreement upon completion of the Term. All information provided during the course of such an examination shall be treated as confidential information under applicable ISO Protocols.

ARTICLE 5 RESOURCE OPERATION AND MAINTENANCE

5.1 Owner's Obligation.

5.1.1 Owner shall operate and maintain the Resource in accordance with ISO New England System Rules and the Transmission, Markets and Services Tariff, as applicable, and Accepted Electric Industry Practice.

5.1.2 Nothing herein shall be construed as to require Owner to take action that is contrary to Good Utility Practice.

5.2 Planned and Forced Outages.

5.2.1 Planned Outages. Owner shall be entitled to take the Resource or a Unit out of operation or reduce the net capability of a Unit during Planned Outages, in accordance with the schedule for Planned Outages as established and implemented pursuant to the ISO New England System Rules, the Transmission, Markets and Services Tariff and the MPSA.

5.2.2 Forced Outages Generally. Owner shall be entitled to take the Resource or a Unit out of operation or reduce the net capability of a Unit upon the occurrence of a Forced Outage.

(b) Notice of Forced Outage. In the event of a Forced Outage Owner shall promptly notify the ISO in writing of its occurrence, estimated duration, and whether Additional Expenditures are expected to be required to return the Resource or Unit, as applicable, to service (a "Notice of Forced Outage").

(c) Notice of Shut-down. As soon as reasonably practicable after the date of a Notice of Forced Outage but in no event greater than thirty (30) days from such notice, either Party may, after assessing the nature, expected duration, and expected incurrence of Additional Expenditures, notify the other in writing of its determination that the Resource or a Unit, as applicable, shall, subject to the provisions of Section 5.2.2(e), be Shut-down (a "Notice of Shut-down") and if such notice applies to the entire Resource that this Agreement should be terminated.

(d) Fixed-Cost Charges. In the event that the Resource is Shut-down, Owner shall only remain entitled to receive the full amount of the Fixed-Cost Charge through the Shut-down Date; provided that with respect to a Shut-down applying only to a Unit, this Agreement shall remain in full force and effect with respect to the remaining Unit and Owner shall promptly file amendments to its Fixed Cost Charge with the Commission.

(e) Option to Approve Additional Expenses. With respect to a Notice of Shut-down made by Owner, if within thirty (30) days of receipt of Owner's Notice of Shutdown the ISO provides written notice to Owner that it is willing to pass through for payment by the Participants in the Monthly Settlement process of the New England Markets such Additional Expenditures (a "Notice of Additional Expenditures") that may be required to recover from such Forced Outage, Owner agrees that it will not Shut-down the Resource or a Unit, as applicable, on that basis and will make such Additional

Expenditures as paid to it by the Participants to return the Resource or a Unit, as applicable, to service from such Forced Outage. The Parties agree that the effectiveness of a Notice of Additional Expenditures otherwise issued in accordance with this Section 5.2.2(e) may be made contingent upon any applicable approvals that the ISO must obtain.

(f) Shut-down Date. With respect to a Notice of Shut-down issued by the ISO pursuant to Section 5.2.2(c), the “Shut-down Date” shall be that date ten (10) days after the receipt of such Notice of Shut-down by the Owner. With respect to a Notice of Shut-down issued by Owner pursuant to Section 5.2.2(c), the “Shut-down Date” shall be that date thirty (30) days after the receipt of such Notice of Shut-down by the ISO unless the ISO has issued a Notice of Additional Expenditures in accordance with Section 5.2.2(e), in which case no Shut-down Date will have occurred with respect to such Notice of Shut-down.

5.3 Additional and Other Expenditures. Except as provided for in Section 5.2.2, Owner shall (i) not be required or otherwise obligated to incur any Additional Expenditures and (ii) not be required to enter into any additional agreements or incur any additional costs, including fixed-fuel costs, that Owner is not already obligated to enter into, or incur, as the case may be, that are not otherwise contemplated by, and being recovered by Owner pursuant to, the Fixed-Cost Charge.

ARTICLE 6 FORCE MAJEURE EVENTS

6.1 Notice of Force Majeure Event. If any Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, the Party unable to perform shall promptly notify the other Party.

6.2 Effect of Force Majeure Event. If the Availability of the Resource is reduced by reason of a Force Majeure Event and subject to Section 5.2.2, Owner shall continue to receive the Fixed-Cost Charge without any reduction while the Force Majeure Event continues. In the event that a Force Majeure Event prevents Owner from operating the Resource for a period in excess of thirty (30) consecutive days, ISO, in its sole discretion, may terminate this Agreement by providing ten (10) days written notice to Owner declaring ISO’s intention to terminate this Agreement.

6.3 Remedial Efforts. The Party unable to perform by reason of a Force Majeure Event shall use reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party’s sole discretion, are contrary to its interests and (ii) subject to Sections 5.2.2 and 5.3, the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

ARTICLE 7 REMEDIES

7.1 Damages and Other Relief.

7.1.1 Liability of ISO. The ISO shall not be liable to Owner for actions or omissions by the ISO in performing its obligations under this Agreement, provided it has not willfully breached this Agreement or engaged in willful misconduct. To the extent Owner (or Agent) has claims against the ISO, Owner (and Agent) may only look to the assets of the ISO for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of the ISO who, Owner (and Agent) acknowledge and agree, have no personal liability for obligations of the ISO by reason of their status as directors, members, officers, employees or agents of the ISO.

7.1.2 Liability of Owner. Except as provided in Section 3.4, Owner (and Agent) shall not be liable to the ISO for actions or omissions by Owner in performing its obligations under this Agreement, provided that Owner (or Agent) has not willfully breached this Agreement or engaged in willful misconduct.

7.1.3 Limitation of Liability. In no event shall Owner (and Agent) be liable to the ISO or the ISO be liable to Owner (and Agent) for any incidental, consequential, multiple or punitive damages, loss of revenues or profits, attorneys fees or costs arising out of, or connected in any way with the performance or non-performance of this Agreement.

7.1.4 Indemnification. Owner (and Agent) shall indemnify, defend and save harmless the ISO and its directors, officers, members, employees and agents from any and all damages, losses, claims and liabilities by or to third parties arising out of or resulting from the performance by the ISO under this Agreement or the actions or omissions of Owner (and Agent) in connection with this Agreement, except in cases of gross negligence or willful misconduct by the ISO or its directors, officers, members, employees or agents.

7.2 Termination for Default. If any Party shall fail to perform any material obligation imposed on it by this Agreement and that obligation has not been suspended pursuant to this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within ten (10) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement. The Party not in default shall have a duty to mitigate damages. Termination of this Agreement pursuant to this Section 7.2 shall be without prejudice to the right of Owner or ISO to collect any amounts due to it prior to the time of termination.

7.3 Waiver. The failure to exercise any remedy or to enforce any right provided in this Agreement or applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing.

7.4 Beneficiaries. Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third party, nor give any third person any rights of subrogation or action against any Party.

**ARTICLE 8
COVENANTS OF THE PARTIES**

8.1 Insurance. Owner shall arrange for and maintain an appropriate minimum level of liability and property insurance coverage with respect to the Resource as follows: [to be negotiated].

8.2 Representations and Warranties.

8.2.1 ISO represents and warrants to Owner as follows:

(a) ISO is a validly existing corporation with full authority to enter into this COS Agreement.

(b) ISO has taken all necessary measures to have the execution and delivery of this COS Agreement authorized, and upon the execution and delivery of this COS Agreement, this COS Agreement shall be a legally binding obligation of ISO.

(c) ISO has all regulatory authorizations necessary for it to perform its obligations under this COS Agreement.

(d) The execution, delivery, and performance of this COS Agreement are within the ISO's powers 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 applicable to it.

8.2.2 Owner represents and warrants to ISO as follows:

(a) Owner is a validly existing entity with full authority to enter into this COS Agreement.

(b) Owner has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this COS Agreement, this Agreement shall be a legally binding obligation of Owner.

(c) Owner has, or has applied for, all regulatory authorizations, necessary for it to perform its obligations under this Agreement.

(d) The execution, delivery, and performance of this COS Agreement are within the Owner's powers 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 applicable to it.

8.2.3 Agent represents and warrants to ISO as follows

(a) Agent is a validly existing entity with full authority to enter into this Agreement.

(b) Agent has taken all necessary measures to have the execution and delivery of this Agreement authorized, and upon the execution and delivery of this Agreement, this Agreement shall be a legally binding obligation of Agent.

(c) Agent has, or has applied for, all regulatory authorizations, necessary for it to perform its obligations under this Agreement.

(d) The execution, delivery, and performance of this Agreement are within the Agent's powers 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 applicable to it.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Assignment.

9.1.1 None of the Parties shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this Article 9.1, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.

9.1.2 Notwithstanding Section 9.1.1, each Party may, without the need for consent from the other Party (and without relieving itself from liability hereunder), transfer or assign this Agreement: (i) to an Affiliate, or (ii) where such transfer is incident to a merger or consolidation with, or transfer of all, or substantially all, of the assets of the transferor to another person, business entity, or political subdivision or public corporation created under the Laws governing the creation and existence of the transferor which shall as a part of such succession assume all of the obligations of the assignor or transferor under this Agreement. Any Party may collaterally assign its rights in this Agreement to its lenders without the need for consent from the other Party. To the extent that any Party seeks to transfer its rights and obligations to a successor entity, such Party shall seek to assign this Agreement to such successor entity, pursuant to this Section 9.1.2.

9.2 Notices. Except as otherwise expressly provided in this Agreement or required by Law, all notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to

have become effective: (a) upon receipt if delivered in person or by facsimile; (b) two days after having been delivered to an air courier for overnight delivery; or (c) seven days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section 9.2):

OWNER AND AGENT:	ISO:
<hr/> NOTICES & CORRESPONDENCE	<hr/> NOTICES & CORRESPONDENCE
[TO COME]	[TO COME]
PAYMENTS BY WIRE TRANSFER	PAYMENTS BY WIRE TRANSFER
[TO COME]	[TO COME]
INVOICES	INVOICES

The foregoing notice provisions may be modified by providing written notice, in accordance with ISO Protocols established from time-to-time.

9.3 Parties' Representatives. All Parties to this Agreement shall ensure that throughout the term of this Agreement, duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Acts and omissions of representatives shall be deemed to be acts and omissions of the Party. Owner and ISO shall be entitled to assume that the representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party. Owner's representatives shall be identified on Exhibit A. ISO's representatives shall be identified on Exhibit B. The Parties may at any time replace their representatives by sending the other Party a revision to its respective Exhibit.

9.4 Effect of Invalidation, Modification, or Condition. Each covenant, condition, restriction, and other term of this COS Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this COS Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority, the invalidity, modification, or condition of such covenant, condition, restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this COS Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights

and obligations have been adversely affected may, in its sole discretion, terminate this COS Agreement or refer the dispute for resolution under the Alternative Dispute Resolution provisions in Appendix D of Market Rule 1.

9.5 Amendments. Any amendments or modifications of this Agreement shall be made only in writing and duly executed by all Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from the Commission. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to conform to the changes to the ISO New England Filed Documents and the ISO New England System Rules.

9.6 Governing Law. This Agreement shall be governed by and construed under the Laws of the Commonwealth of Massachusetts without regard to conflicts of laws principles.

9.7 Entire Agreement. This Agreement consists of the terms and conditions set forth herein, as well as the Appendices hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties and supersedes all prior negotiations, undertakings, agreements and business term sheets.

9.8 Independent Contractors. Owner (and Agent, as Owner's representative) and ISO acknowledge that as between Owner and the ISO there is an independent contractor relationship, and that nothing in this COS Agreement shall create any joint venture, partnership, or principal/agent relationship between the Parties. Neither Owner (or Agent) nor ISO shall have any right, power, or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

9.9 Counterparts. This COS Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same agreement.

9.10 Confidentiality. Confidential information identified as such by a Party and provided to the other Party pursuant to this Mitigation Agreement shall be governed by the *ISO New England Information Policy*, subject to the following:

9.10.1 Nothing herein or therein shall limit the right of a Party to file a copy of this Agreement with the Commission, without redaction, to the extent that law, regulation, or agency order makes such filing necessary or appropriate.

9.10.2 Notwithstanding anything in this Agreement to the contrary, if during the course of an investigation or otherwise, the Commission requests that a Party (the "responding Party") provide to it information that has been designated by the other Party to be treated as confidential under this Agreement, the responding Party shall provide the requested information to the Commission or its staff within the time provided for in the request for information. The responding Party shall promptly notify the other Party upon receipt of any such request and either Party, consistent with 18 CFR § 388.112, may,

but shall not be required, to request that the information be treated as confidential and non-public by the Commission and its staff and that the information be withheld from public disclosure.

9.11 Submittal to the Commission. The Parties acknowledge and agree that (i) the Fixed-Cost Charge and the Variable Cost formula shall be established pursuant to an FPA Section 205 proceeding to be initiated by application of Owner or Agent; provided, however, that any application for changes to the Variable Cost formula shall be made only under Section 206; (ii) this Agreement constitutes the basis for Owner's recovery of its fixed and variable costs for operating and maintaining the Resource during the Term.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

OWNER:

[NAME]

By:

Name:

Title:

ISO:

ISO NEW ENGLAND INC.

By:

Name:

Title:

[agent]

By:

Name:

Title:

EXHIBIT A

Owner's Representatives

[OWNER TO PROVIDE]

EXHIBIT B

ISO's Representatives

[ISO TO PROVIDE]

SCHEDULE 1

INFORMATION ON MARGINAL COST

1. The Fuel Index Price for the Resource shall use the following data source:

[Check applicable box]

Energy/Petroleum Argus
Gas Daily (Financial Times Energy)

<i>[Check applicable box]</i>	<u>Fuel Type</u>	<u>Frequency of Data</u>
	Coal_HS	weekly
	Coal_LS	weekly
	MA_natgas1	daily (business days)
	MA_natgas2	daily (business days)
	MA_natgas3	daily (business days)
	avg_MA_natgas	daily (business days)
	NY_natgas	daily (business days)
	No2	daily (business days)
	No2_LS_aka_DIESE L	daily (business days)
	No6_030	daily (business days)
	No6_070	daily (business days)
	No6_100	daily (business days)
	No6_220	daily (business days)
	No6_300	daily (business days)
	Jet_fuel	daily (business days)
	LS_Jet_kero	daily (business days)

based on the following delivery point _____

SCHEDULE 2

COST REPORTING FORM

Hour	Actual Net Generation (MWh)	Heat Rate (Btu/kWh)	Fuel Use For Generation (MMBtu)	Start-up & No-Load Indicator	Start-up Fuel Use (MMBtu)	No-Load Fuel Use (MMBtu)	Total Fuel Consumption (MMBtu)	Fuel Cost Delivered (\$)	Fuel Cost Ancillaries (\$)	Fuel Cost Adders (\$)	Start-Up & No-Load O&M Costs (\$)
A	B	C	$D = \frac{B \times C}{1000}$	E = "H", "C", or "N"	F > 0 if E = "H" or "C"	G > 0 if E = "N"	$H = D + F + G$	$I = H \times Q$	$J = H \times R$	$K = H \times (T + V + X)$	L > 0 if E = "H", "C" or "N"
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
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24										
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Q	Fuel Cost Delivered (Sec. II.A)	\$/MMBtu	U	NOx Allowance Value	\$/Ton
R	Fuel Cost Ancillaries (Sec. II.B-F)	\$/MMBtu	V	NOx Allowance Adder	\$/MMBtu
S	SO2 Allowance Value	\$/Ton	W	Operating Permit Fee	\$/Ton of Emissions
T	SO2 Allowance Adder	\$/MMBtu	X	Operating Permit Fee Adder	\$/MMBtu

SCHEDULE 3

UNIT CHARACTERISTICS

[NAME]

Low Operating Limit: _____
High Operating Limit (normal): _____
High Operating Limit (emergency): _____ MW
Ramp Rate (normal): _____ MW/Minute
Ramp Rate (emergency): _____ MW/Minute
Minimum Run Time: _____ hours (__ days)
Minimum Shutdown Time: ____ hours
Start Up Time (Cold Conditions)*: ____ hours
Start Up Time (Hot Conditions): ____ hours

*Cold start applies after _____ hours from shutdown

The Variable O&M Charge shall be as follows: **[to be an annually adjusting formulary rate approved by FERC]**

SCHEDULE 4

MONTHLY FIXED PAYMENT

The formulas and values used to compute the Monthly Fixed Payment for each Resource for each Month are set forth in Equation B-1 below:

Equation B-1

$$\text{Monthly Fixed Payment} = \begin{cases} > 0 \text{ or} \\ \text{Monthly Availability Payment} - \text{Monthly Nonperformance Penalty} \end{cases}$$

Section 1. Monthly Availability Payment. The Monthly Availability Payment is calculated in accordance with Equation B-2 below:

Equation B-2

$$\text{Monthly Availability Payment (\$)} = \text{lesser of } \begin{cases} \text{Current Monthly Availability Payment (\$)} \\ \text{100\% of AFRR minus Cumulative Monthly Availability Payments Excluding Current Monthly Availability Payment (\$)} \end{cases} \text{ or } \begin{cases} \text{100\% of AFRR minus Cumulative Monthly Availability Payments Excluding Current Monthly Availability Payment (\$)} \\ \text{Current Monthly Availability Payment (\$)} \end{cases}$$

Section 2. Current Monthly Availability Payment. The Current Monthly Availability Payment is calculated in accordance with Equation B-3 below:

Equation B-3

$$\text{Current Monthly Availability Payment (\$)} = \text{Sum for all Hours} \left[\text{Hourly Availability Rate (\$/hr)} * \frac{\text{Resource Availability Limit (MW)}}{\text{Maximum Net Dependable Capacity (MW)}} \right]$$

Where:

A. Hourly Availability Rate is calculated in accordance with Equation B-4 below.

$$\text{Hourly Availability Rate} = \frac{\text{Annual Fixed Revenue Requirement}}{\text{Target Available Hours}}$$

The Annual Fixed Revenue Requirement is set forth in Section 7 below.

The Target Available Hours are set forth in Section 6 below.

The Hourly Availability Charges for each Resource are as follows: **[to be inserted]**

B. Resource Availability Limit is as follows: **[to be inserted]**

C. Maximum Net Dependable Capacity is as follows: **[to be inserted]**

Section 3. Monthly Nonperformance Penalty. The Monthly Nonperformance Penalty is calculated pursuant to Section 3.4 of the Agreement. The Hourly Penalty Rate is equal to the Resource's Hourly Availability Rate.

Section 4. Target Available Hours. The Resource's Target Available Hours for the Term are as follows: _____, calculated in accordance with the following Equation B-5:

Equation B-5

$$\text{Target Available Hours (TAH)} = \text{Hours in the Calendar Year} - (\text{Average Outage Hours})$$

Section 5. Annual Fixed Revenue Requirement (AFRR)

The Annual Fixed Revenue Requirement for the Resource is as follows:

Sheet Nos. 7578 through 7599 are reserved for future use.