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SECTION III

MARKET RULE 1

APPENDIX I

FORM OF COST-OF-SERVICE AGREEMENT

Issued by: Raymond W. Hepper,
Vice President and General Counsel
Issued on: November 7, 2008

Effective: October 29, 2008
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APPENDIX I
FORM OF COST-OF-SERVICE AGREEMENT

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COST-OF-SERVICE AGREEMENT

This COST-OF-SERVICE AGREEMENT (“Agreement”) is made as of the ___ day of _____, 20___, among _____ (“Owner”), a _____ {fill in type of legal entity}, _____ (“Lead Participant”), a _____ {fill in type of legal entity}, acting as agent for Owner, and ISO NEW ENGLAND INC., a Delaware non-stock corporation (“ISO”).

RECITALS

- A. Owner is the owner of _____ (Asset ID No. ___), a _____ MW electrical generating station together with appurtenant facilities and structures,, located at _____ (the “Resource”). {If the station is comprised of more than one unit, describe all units at the station, including their MW and Asset IDs, and then define the units that are subject to this Agreement as “Resources”}
- B. [Owner is [the direct wholly-owned subsidiary of /affiliate of /unaffiliated with the] {specify relationship between Owner and Lead Participant} Lead Participant, [which is a Market Participant/both of which are Participants 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. Lead Participant administers the Resource in accordance with the ISO New England Filed Documents and the ISO New England System Rules and causes energy, capacity and ancillary services from the Resource to be offered 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. [Owner / Lead Participant] submitted a [Permanent De-list Bid / Non-Price Retirement Request] for the Forward Capacity Auction for the Commitment Period starting June 1, _____.
- E. ISO concluded that the Resource[s] will be needed for reliability purposes during the Term and expects the Resource may be required to run out-of-economic merit order to relieve transmission constraints; and as a result [rejected the Permanent De-list Bid / did not accept the Non-Price Retirement Request].
- F. The Parties have agreed (i) that Owner shall cause an FPA Section 205 proceeding to be initiated to establish the Annual Fixed Revenue Requirement and (ii) to enter into this Agreement for supplying energy, ancillary services and capacity from the Resource[s] into the New England Markets and thereby (x) set the rate by which Owner shall receive its fixed costs for the Resource[s] from Participants and (y) govern how the Lead Participant shall cause bids to be made such that Owner receives from the Participants its variable costs for such supply.

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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 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, or other applicable market rules.
- 1.1.1. **“Additional Expenses”** shall mean costs associated with O&M Items in excess of the Fixed O&M Expenses.
 - 1.1.2. **“Annual Fixed Revenue Requirement”** shall have the meaning set forth in Schedule 3.
 - 1.1.3. **“Availability”** means the capability of the Resource, in whole or in part, at any given time, to produce energy, capacity, or ancillary services in accordance with Accepted Electric Industry Practice, and “Available” shall be construed accordingly.
 - 1.1.4. **“Effective Date”** shall have the meaning set forth in Section 2.1.
 - 1.1.5. **“Fixed O&M Expenses”** shall have the meaning set forth in Schedule 3.
 - 1.1.6. **“Force Majeure Event”** means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, any order, regulation or restriction imposed by a Governmental Authority, or any other cause beyond a Party’s control.
 - 1.1.7. **“Forced Outage”** means any outage of the Resource (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 ability to supply energy, capacity and/or ancillary services.
 - 1.1.8. **“FPA”** means the Federal Power Act.
 - 1.1.9. **“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.
 - 1.1.10. **“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.

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- 1.1.11. **“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.
- 1.1.12. **“Monthly Reports”** shall have the meaning set forth in Section 4.4.4.
- 1.1.13. **“Monthly Settlement”** means the monthly settlement process set forth in the ISO New England Manuals.
- 1.1.14. **“Notice of Additional Expenses”** shall have the meaning set forth in Section 7.1.2(e).
- 1.1.15. **“Notice of Forced Outage”** shall have the meaning set forth in Section 7.1.2(b).
- 1.1.16. **“Notice of Shut-down”** shall have the meaning set forth in Section 7.1.2(c).
- 1.1.17. **“O&M Expenses”** see “Fixed O&M Expenses”
- 1.1.18. **“O&M Items”** means 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.
- 1.1.19. **“Owner”** shall have the meaning set forth in the preamble of this Agreement and, where applicable and appropriate, its assignee and/or designee.
- 1.1.20. **“Party”** means either the ISO or Owner or Lead Participant as the context requires, and “Parties,” means ISO and Owner and/or Lead Participant, as the context requires.
- 1.1.21. **“Periodic Cost Report”** shall have the meaning set forth in Section 6.1.1.
- 1.1.22. **“Planned Outage,”** means a planned interruption, in whole or in part, in the electrical output of a Resource to permit Owner to perform maintenance and repair of the Resource, including O&M Items.
- 1.1.23. **“Resource”** shall have the meaning set forth in the Recitals.
- 1.1.24. **“Resource Characteristics”** shall have the meaning set forth in Section 3.4
- 1.1.25. **“Shut-down”** shall have the meaning set forth in Section 7.1.2(c).
- 1.1.26. **“Shut-down Date”** shall have the meaning set forth in Section 7.1.2(f).
- 1.1.27. **“Stipulated Marginal Cost”** shall have the meaning set forth in Section 3.4.

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- 1.1.28. “**Stipulated Variable Cost**” shall have the meaning set forth in Section 3.4.
- 1.1.29. “**Stipulated Start-Up Cost**” shall have the meaning set forth in Section 3.4.
- 1.1.30. “**Stipulated No-Load Cost**” shall have the meaning set forth in Section 3.4.
- 1.1.31. “**Stipulated Regulation Offer**” shall have the meaning set forth in Section 3.4
- 1.1.32. “**Supplemental Capacity Payment**” shall have the meaning set forth in Schedule 3.
- 1.1.33. “**Term**” shall have the meaning set forth in Section 2.1.
- 1.1.34. “**Variable O&M**” shall be the amount specified in Schedule 1.
- 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 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 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 the Parties hereto and shall not be construed against any Party as the sole drafter.

ARTICLE 2

TERM

2.1. Effective Date and Term. If ISO has not notified the Owner that the Resource is no longer needed for reliability reasons by 12:00 am on June 1 of the year preceding the Capacity Commitment Period for which [the Permanent De-List Bid was rejected / the Non-price Retirement Request was not accepted], this Agreement shall be effective at the beginning of the operating hour ending at 1:00 a.m., June 1, 200__ (the "Effective Date") and shall terminate at the end of the operating hour beginning at 11:00 p.m. as of the date of the termination of the [last] Resource as provided in Section 2.2 ("Term").

2.2. Termination. This Agreement may be terminated as follows:

2.2.1. Once this Agreement is effective, it shall remain in effect for at least a 12-month Capacity Commitment Period. ISO shall terminate this Agreement as to [the/a] Resource effective any time after such minimum 12-month term upon one hundred twenty (120) days written notice to Owner when ISO determines that [the/a] Resource is no longer needed for system reliability. The one-hundred twenty day notice may be issued by ISO prior to the completion of the minimum 12-month term. If two or more Resources are subject to this Agreement, the Agreement may be terminated with respect to one or more individual Resources. The Agreement terminates as of the date that ISO has terminated the Agreement with respect to all of the Resources that were subject to the Agreement as of the Effective date. Owner shall provide timely notice of any such termination of this Agreement to the Commission.

2.2.2. Upon 30 days notice to the Owner, the ISO may unilaterally terminate this Agreement if, over the twelve (12) month period preceding the notice, the ISO determines that the average value over all hours in that period of the ratio of the Resource's Economic Maximum as it may be redeclared from time to time to the Capacity Supply Obligation is less than fifty percent (50%). Owner shall retain all of its existing rights to challenge the ISO's calculation under the ISO Billing Policy.

2.2.3. This Agreement may be terminated as provided in Section 7.1.2, Section 9.2 and Section 11.4.

2.2.4. Consequence of Termination or Expiration. [One of the following alternatives shall be applicable to each Resource]

[Inasmuch as the Owner submitted a Permanent De-List Bid, upon termination, the provisions of Market Rule 1, Section III.13.2.5.2.5 apply and as of the date of termination the Resource is de-listed, relieved of its Capacity Supply Obligation, and no longer receives compensation under the Agreement. In addition, the Resource is no longer eligible to participate as an Existing Resource in any reconfiguration auction, Forward Capacity Auction, or Capacity Supply Obligation Bilateral for the then current Capacity Commitment Period or subsequent periods of Capacity Commitment Periods.]

[Inasmuch as the Owner submitted a Non-Price Retirement Request, unless pursuant to Market Rule 1 Section III.13.1.2.3.1.5 the Commission has directed that the obligation to retire be removed, upon termination the provisions of Market Rule 1 Section III.13.2.5.2.5 shall apply, and, as of the date of termination, the Resource is de-listed, relieved of its Capacity Supply Obligation, and no longer receives compensation under this Agreement. In addition, upon termination of the Agreement, the interconnection rights for the Resource shall terminate and the status of the Resource will be converted to retired.]

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

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ARTICLE 3

RIGHTS AND OBLIGATIONS

- 3.1. In General.** During the Term, the Resource is a listed Generating Capacity Resource with a Capacity Supply Obligation. The Owner and Lead Participant shall operate, maintain and administer the Resource in accordance with (a) this Agreement, (b) the ISO New England Filed Documents, (c) the ISO New England System Rules, and (d) Accepted Electric Industry Practice, as applicable. Nothing herein shall be construed as to require the Owner or Lead Participant to take action that is contrary to Accepted Electric Industry Practice.
- 3.2. Insurance.** Owner shall arrange for and maintain an appropriate level of liability and property insurance with respect to the Resource consistent with Accepted Electric Industry Practice.
- 3.3. Bilateral Agreements.** The Resource will not be subject to any bilateral agreement for the sale or control of energy, capacity, or ancillary services from the Resource, unless the Owner or Lead Participant, as applicable, provides the ISO with a written copy of the proposed agreement at least 30 days in advance. If, upon the Effective Date, the Owner is not the registered Owner in ISO's Customer and Asset Management System (CAMS) for the full output of the Resource, the Owner shall provide the ISO with a written copy of any agreement between the Owner and the Registered Owner within seven days.
- 3.4. Supply Offers.** For each day, the Lead Participant shall offer for sale energy and ancillary services into the New England Markets from the Resource based on the characteristics and operating parameters specified in Schedule 2 (the "Resource Characteristics") and with Supply Offers equal to the Stipulated Variable Costs as provided below. Lead Participant shall use commercially reasonable efforts to cause the submittal of Supply Offers for hourly values of Economic Minimum and Economic Maximum that are consistent with ambient air forecasts and /or environmental permit parameters. [Lead Participant also shall offer Regulation into the New England Markets from the Resource based on the Resource Characteristics using only Stipulated Regulation Offers as defined below.]
- 3.4.1. The Stipulated Variable Costs shall be self-adjusting formulary rates accepted by the Commission pursuant to the FPA Section 205 proceeding initiated by Owner and updated daily or at the most frequent time interval permitted under the ISO New England System Rules. Stipulated Variable Costs shall be determined according to the definitions below using parameter values from Schedule 1.

Stipulated Marginal Cost (“SMC”) per MWh = (Fuel + O&M + Other)

Where:

Fuel = Heat Rate, MMBTU/MWh x (Fuel Index Price, \$/MMBTU, +Approved Fuel Variable Transportation Service Charges, \$/MMBTU) + Fuel Cost Other per MWh]

O&M = Variable O&M for energy production per MWh as specified in Schedule 1

Other = (SO₂ Allowance Adder + NO_x Allowance Adder + CO₂ Allowance Adder + Other Allowance Adder + Operating Permit Adder)

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

Where:

Stipulated Start-Up Cost per Start = (Start-Up Fuel Use x Fuel Index Price, \$/MMBTU) + Start-Up O&M + Start-Up Other (as specified in Schedule 1)

Stipulated No-Load Cost per Service Hour = (No Load Fuel Use, MMBTU x Fuel Index Price, \$/MMBTU) + Fuel Cost Ancillaries + No Load O&M + No-Load Other (as specified in Schedule 1)

3.4.1.1 The “Fuel Index Price” shall mean the current daily price, using the third party data as specified on Schedule 1, applicable to the delivery point specified on Schedule 1.

3.4.1.2 [“Stipulated Regulation Offer” shall mean the actual offer for providing Regulation from the Resource, which shall not exceed \$[100] or the cap specified in Market Rule 1, as may be amended from time to time. {Note: Owner/Lead Participant to discuss with Market Monitoring if Resource has supplied regulation service}].

3.5. Self-Scheduling. As long as a fuel limitation does not result, and subject to the ISO New England System Rules, the ISO New England Operating Documents and the compensation provisions of Article 4, the Lead Participant may request to self-schedule the Resource for operational and maintenance considerations, including testing, and fuel management purposes . ISO System Operations may accept or not accept the self-schedule in its sole discretion

ARTICLE 4

COMPENSATION AND SETTLEMENT

- 4.1. In General.** The Owner is subject to charges and credits for services in the New England Markets, including the Supplemental Capacity Payment, in accordance with the ISO New England System Rules and the ISO New England Administrative Procedures, with settlement taking place in the normal weekly and monthly settlement processes as they may be amended from time to time. If an entity other than the Owner has been registered as the Owner in the ISO's Customer and Asset Registration System ("Registered Owner"), then the Supplemental Capacity Payment shall be settled through the account of the Registered Owner unless the Owner has a settlement account with the ISO and, after consent by ISO, the Owner, Registered Owner and Lead Participant provide written authorization to settle the Supplemental Capacity Payment through the Owner's Settlement Account. The Owner, Registered Owner and Lead Participant must comply with all ISO requirements for customer and asset registration.
- 4.2. Variable Cost Recovery.** In order to provide for recovery of variable costs, the Supply Offers applicable to the Resource as determined in accordance with Section 3.4. shall be included in the calculation of Net Commitment Period Compensation ("NCPC") and the Revenue Credit as defined below. All NCPC shall be paid in accordance with applicable ISO settlement procedures.
- 4.3. Fixed-Cost Recovery.** Owner shall be entitled to a Supplemental Capacity Payment for the Resource for each Month, calculated in accordance with Schedule 3, which ISO shall cause to be paid by Participants through the monthly settlement process for the New England Markets. The Annual Fixed Revenue Requirement shall be as determined by the Commission pursuant to an FPA Section 205 proceeding initiated by Owner.
- 4.4. Revenue Credit.**
- 4.4.1. In General. All revenues related to the Resource less the variable costs of producing those revenues ("Revenue Credit") shall reduce the Supplemental Capacity Payment in accordance with the formulas in Schedule 3.
- 4.4.2. FCA Payments. The Revenue Credit shall include the FCA Payment as it has been adjusted for Peak Energy Rent and Availability Penalties in the normal FCA settlement. The adjusted amount is allowed to be negative in the calculation of the Revenue Credit and to increase the Supplemental Capacity Payment (when that part of the calculation is viewed in isolation). Provided, however, any Availability Credits earned pursuant to the provisions of Market Rule 1, Section III.13.7.2.7.1.4 shall be ignored for calculating the Revenue Credit and shall inure to the benefit of the Owner, subject to the maximum earnings provision of Schedule 3, Part 1.

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- 4.4.3. Revenues Received in the New England Markets. All revenues related to the Resource earned in the New England Markets settled by ISO (in addition to the revenues earned in the Forward Capacity Market above), less the Stipulated Variable Cost of producing those revenues as represented by the Supply Offers, shall be included in the calculation of the Revenue Credit. For self-scheduled hours, inframarginal revenue shall not be reduced for Stipulated Variable Costs in excess of hourly revenue. Monthly inframarginal revenue is the sum of all daily positive inframarginal revenue values. If the revenues related to the Resource are not paid on a Resource specific basis, the ISO shall allocate such revenues to the Resources that are subject to this Agreement.
- 4.4.4. Other Revenues. Any revenues related to the Resource that have not been settled by ISO (including from bilateral agreements, emission credits, release of firm transportation arrangements, sale of surplus equipment etc.), less any incremental costs directly related to securing additional revenue that are not already accounted for in the Annual Fixed Revenue Requirement or Stipulated Variable Costs, will be included in the Revenue Credit. These incremental costs may not be greater than the incremental revenues on a case-by-case basis. The Owner and Lead Participant shall report all such other revenues, or the absence thereof, to ISO in a monthly report (the "Monthly Report").

ARTICLE 5

MARKET MONITORING

- 5.1. Mitigation.** Although this Agreement provides for Supply Offers that do not exceed thresholds identified in Appendix A, Market Rule 1, nothing herein shall preclude the ISO from otherwise applying any provision of Appendix A or Appendix B to Market Rule 1 to Owner or Lead Participant, any Affiliate of Owner or Lead Participant, the Resource, or any other resources of Owner or Lead Participant or any Affiliate of Owner or Lead Participant, including mitigation of Supply Offers for Resources covered by this Agreement to the applicable Stipulated Variable Cost as defined in Section 3.4.
- 5.2. Adjustment.** After consultation with the Lead Participant, Supply Offers that exceed Stipulated Variable Cost are subject to adjustment by ISO Market Monitoring to Stipulated Variable Cost.
- 5.3. Dual Fuel Resources [If dual fuel].** The Lead Participant is required to submit Supply Offers reflecting the fuel to be used. If the Lead Participant is to submit Supply Offers based on the higher cost fuel, it must advise ISO Market Monitoring as soon as practicable in advance of submitting such an offer and provide a written explanation as to the cause, Availability implications and expected duration.

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ARTICLE 6
REPORTING

6.1. Variable Cost and Resource Characteristic Reporting.

6.1.1. Owner shall update the components of Stipulated Variable Costs that are not publicly available as they may change from time to time on a timely basis, along with supporting information as requested, in a format approved by ISO and consistent with the formulas provided in Section 3.4 and Schedule 1 (the "Periodic Cost Report"). If Owner fails to provide updated information on a timely basis, Supply Offers may be adjusted to Stipulated Variable Costs based on the information on file. ISO will give Owner 30 days prior written notice of any change in the form of the Periodic Cost Report.

6.1.2. The Resource Characteristics applicable to the Resource during the Term are set forth in Schedule 2 hereto. Owner shall provide ISO with updated Resource Characteristics set forth on a revised Schedule 2 immediately upon any change of those Resource Characteristics. If ISO does not agree to the revised Schedule, the Schedule in effect shall remain in effect during the Term pending alternative dispute resolution in accordance with Appendix D to Market Rule 1.

6.2. 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 Lead Participant 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 ISO may perform audits of the Monthly Reports and the Periodic Cost 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 7

RESOURCE OPERATION AND MAINTENANCE

7.1. Planned and Forced Outages.

7.1.1. **Planned Outages.** Owner shall be entitled to take the Resource out of operation or reduce the net capability of the Resource 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.

7.1.2. Forced Outages.

- (a) **Generally.** Owner shall be entitled to take the Resource out of operation or reduce the net capability of the Resource upon the occurrence of a Forced Outage.
- (b) **Notice of Forced Outage.** In the event of a Forced Outage that is anticipated to last for more than ten (10) days, in addition to any other notification obligation arising under ISO New England System Rules, the Transmission, Markets and Services Tariff and the MPSA, Owner shall promptly notify ISO Reliability Contract Services in writing of its occurrence, estimated duration, and whether Additional Expenses are expected to be required to return the Resource to service (a "Notice of Forced Outage"). Owner shall also inform ISO of the availability of any previously retired unit (the "Substitute Unit") and the costs and time required to bring the Substitute Unit back into service and to retire the Resource on 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 the start of such Forced Outage, either Party may, after assessing the nature, expected duration, and expected incurrence of Additional Expenses, notify the other in writing of its determination that the Resource shall, subject to the provisions of Section 7.1.2(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) **Supplemental Capacity Payment.** In the event that the Resource is Shut-down, Owner shall only remain entitled to receive the Supplemental Capacity Payment based on the AFRR 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(s). Owner may file amendments to the AFRR with the Commission.

- (e) **Option to Approve Additional Expenses.** With respect to a Notice of Shutdown made by Owner, if within thirty (30) days of receipt of Owner's Notice of Shut-down 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 Expenses (a "Notice of Additional Expenses") that may be required to recover from such Forced Outage, Owner agrees that it will, with reasonable dispatch, take the action requested by ISO, i.e., not Shut-down the Resource and make such Additional Expenses as paid to it by the Participants to return the Resource to service from such Forced Outage, or make such expenditures as paid to it by the Participants to bring the Substitute Unit into service and retire the Resource on Forced Outage. The Parties agree that the effectiveness of a Notice of Additional Expenses shall be immediately effective, and Owner shall be entitled to begin receiving payments from ISO pursuant thereto, as of the day following the date the Owner files a request under Section 205 of the FPA with the Commission to recover from ISO the Additional Expenses identified in the Notice of Additional Expenses. Payments will be made subject to refund pending the approval of such Additional Expenses by the Commission. The Parties further agree that Owner is obligated to use its best efforts to minimize Additional Expenses and that the amounts approved under the Notice of Additional Expenses are subject to offset by any proceeds from any and all third-party sources, including insurance proceeds, paid to Owner to return the Resource from the Forced Outage. Owner shall make a subsequent reconciliation ("true-up") filing with the Commission and refund any payments for Additional Expenses paid to Owner that are disallowed by the Commission, or that exceed the amount actually expended by the Owner, after offsets.
- (f) **Shut-down Date.** With respect to a Notice of Shut-down issued by ISO pursuant to Section 7.1.2(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 7.1.2(c), the "Shut-down Date" shall be that date thirty (30) days after the receipt of such Notice of Shut-down by ISO unless ISO has issued a Notice of Additional Expenses in accordance with Section 7.1.2(e), in which case no Shut-down Date will have occurred with respect to such Notice of Shut-down or the Shut-down Date will be the date on which the Substitute Unit is brought back into service. As of the Shutdown Date, the interconnection rights for the Resource shall terminate and the status of the Resource will be converted to retired.

7.2. Additional and Other Expenses. Except as provided for in Section 7.1, Owner shall (i) not be required or otherwise obligated to incur any Additional Expenses 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 Annual Fixed Revenue Requirement.

ARTICLE 8

FORCE MAJEURE EVENTS

- 8.1. 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.
- 8.2. Effect of Force Majeure Event.** If the Availability of the Resource is reduced by reason of a Force Majeure Event, Section 7.1.2 shall apply (i.e. a Force Majeure Event shall be deemed to create a Forced Outage). Subject to reduction by the COS Availability Penalty and to Sections 7.1.2, 9.2, and 11.4, Owner shall continue to receive the Supplemental Capacity Payment without any other reduction while the Force Majeure Event continues.
- 8.3. 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 7.1.2 and 7.2, 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.

Issued by: Raymond W. Hepper,
Vice President and General Counsel
Issued on: November 7, 2008

Effective: October 29, 2008
Filed to comply with order of the Federal Energy
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issued October 28, 2008, 125 FERC ¶ 61,102 (2008)

ARTICLE 9

REMEDIES

9.1. Damages and Other Relief.

- 9.1.1. Liability of ISO. ISO shall not be liable to Owner or Lead Participant for actions or omissions by 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 Lead Participant has claims against ISO, Owner and Lead Participant may only look to the assets of ISO for the enforcement of such claims and may not seek to enforce any claims against the directors, members, officers, employees or agents of ISO who, Owner and Lead Participant acknowledge and agree, have no personal liability for obligations of ISO by reason of their status as directors, members, officers, employees or agents of ISO.
- 9.1.2. Liability of Owner. Except as provided by the COS Availability Penalty, Owner and Lead Participant shall not be liable to ISO for actions or omissions by Owner or Lead Participant in performing their obligations under this Agreement, provided that Owner or Lead Participant has not willfully breached this Agreement or engaged in willful misconduct.
- 9.1.3. Limitation of Liability. In no event shall Owner and Lead Participant be liable to ISO or ISO be liable to Owner and Lead Participant 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.
- 9.1.4. Indemnification. Owner and Lead Participant shall indemnify, defend and save harmless 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 ISO under this Agreement or the actions or omissions of Owner and Lead Participant in connection with this Agreement, except in cases of gross negligence or willful misconduct by ISO or its directors, officers, members, employees or agents.

- 9.2. **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 9.2 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.

-
- 9.3. 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.
- 9.4. 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.

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ARTICLE 10
COVENANTS OF THE PARTIES

10.1. ISO represents and warrants to Owner and Lead Participant as follows:

10.1.1. ISO is a validly existing corporation with full authority to enter into this Agreement.

10.1.2. ISO 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 ISO.

10.1.3. ISO has all regulatory authorizations necessary for it to perform its obligations under this Agreement.

10.1.4. The execution, delivery, and performance of this Agreement are within 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.

10.2. Owner represents and warrants to ISO as follows:

10.2.1. Owner is a validly existing entity with full authority to enter into this Agreement.

10.2.2. Owner 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 Owner.

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

10.2.4. The execution, delivery, and performance of this 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.

10.3. Lead Participant represents and warrants to ISO as follows:

10.3.1. Lead Participant is a validly existing entity with full authority to enter into this Agreement.

10.3.2. Lead Participant 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.

10.3.3. Lead Participant has, or has applied for, all regulatory authorizations, necessary for it to perform its obligations under this Agreement.

10.3.4. The execution, delivery, and performance of this Agreement are within the Lead Participants 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 11

MISCELLANEOUS PROVISIONS

11.1. Assignment.

- 11.1.1. 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 11.1, this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties.
- 11.1.2. Notwithstanding Section 11.1.1, 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. Provided, however, that any Party who transfers or assigns this Agreement as provided in subsections “i” or “ii” of this Section 11.1.2 shall provide timely notice to the other Party or Parties of such change, including the effective date and changes, if any, to the nominations under Section 11.2 and Exhibits A or B, as appropriate. 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 11.1.2.
- 11.1.3. Upon 60 days notice from Owner or Lead Participant, the Lead Market Participant’s role under this Agreement may terminate and then this function must be assigned by Owner to another entity fully capable of fulfilling this role consistent with the ISO New England Filed Documents and the ISO New England System Rules. The Owner, the current Lead Participant, and the successor Lead Participant must comply with all ISO requirements for Customer Asset registration. Owner is not obligated to assign the Lead Market Participant role to another entity and may assume this role, if it is qualified to do so, by notifying the ISO.
- 11.1.4. The Owner may designate a new Registered Owner by providing 30 days notice under the Agreement and a written copy of any agreement between the Owner and the new registered Owner. The Owner, the Registered Owner and the Lead Participant must comply with all ISO requirements for Customer and Asset registration.

11.2. 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 11.2):

OWNER AND LEAD PARTICIPANT:

ISO:

NOTICES & CORRESPONDENCE

NOTICES & CORRESPONDENCE

[TO COME]

Mark H. Freise,
Reliability Contracts Manager
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
Tel: (413) 540-4429
Fax: (413) 535-4156

with a copy to:

Theodore Paradise
Senior Counsel
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040
Tel: (413) 540-4585
Fax: (413) 535-4379

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

11.3. 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 and Lead Participants 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.

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- 11.4. Effect of Invalidation, Modification, or Condition.** Each covenant, condition, restriction, and other term of this 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 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 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 Agreement or refer the dispute for resolution under the Alternative Dispute Resolution provisions in Appendix D of Market Rule 1.
- 11.5. 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 reflect any changes to the design of the New England Markets that are approved by the Commission from time to time.
- 11.6. 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.
- 11.7. 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.
- 11.8. Independent Contractors.** Owner (and Lead Participant, as Owner's representative) and ISO acknowledge that as between Owner and ISO there is an independent contractor relationship, and that nothing in this Agreement shall create any joint venture, partnership, or principal/agent relationship between the Parties. Neither Owner or Lead Participant 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.
- 11.9. Counterparts.** This 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.

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

11.10.1. 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.

11.10.2. 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.

11.11. Submittal to the Commission. The Parties acknowledge and agree that (i) the Annual Fixed Revenue Requirement and the formula for calculating Stipulated Variable Costs shall be established pursuant to an FPA Section 205 proceeding to be initiated by application of Owner provided, however, that any application for changes to the formula for calculating Stipulated Variable Costs 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 NEW ENGLAND INC.

By:
Name:
Title:

[LEAD PARTICIPANT NAME]

By:
Name:
Title:

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EXHIBIT A

OWNER'S AND LEAD PARTICIPANT'S REPRESENTATIVES

[OWNER AND LEAD PARTICIPANT TO PROVIDE]

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EXHIBIT B

ISO'S REPRESENTATIVES

Kevin Kirby
Vice President, Market Operations
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040

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SCHEDULE 1

INFORMATION ON MARGINAL COST

[The Lead Participant or Owner shall provide the ISO, on a timely basis in advance of the Section 205 filing prior to the commencement of the Capacity Commitment Period, with draft Schedule 1 and Schedule 2 including supporting cost and other information, as the ISO may require.]

1. The Fuel Index Price for the Resource:
 - a. Natural Gas – specify price index, delivery point, pipeline and Local Distribution Company (“LDC”).
 - b. Applicable gas contract including any transportation charges, Other Fossil fuel – specify price index, delivery type (barge, tanker, rail, truck). Applicable fuel contract, including any transportation agreements and applicable (sales) tax.

Each Fuel Index Price shall use the following data source(s), respectively, as appropriate:

[Check applicable box]

- Energy/Petroleum Argus
- Intercontinental Commodities Exchange (“ICE”)
- Other (as mutually agreed)_____

[Check applicable box]	<u>Fuel Type</u>	<u>Frequency of Data</u>
<input type="checkbox"/>	Coal_	weekly
<input type="checkbox"/>	Natural Gas	daily (business days)
<input type="checkbox"/>	No2	daily (business days)
<input type="checkbox"/>	No2_LS_aka_DIESEL	daily (business days)
<input type="checkbox"/>	No6_030	daily (business days)
<input type="checkbox"/>	No6_070	daily (business days)
<input type="checkbox"/>	No6_100	daily (business days)
<input type="checkbox"/>	No6_220	daily (business days)
<input type="checkbox"/>	No6_300	daily (business days)
<input type="checkbox"/>	Jet_fuel	daily (business days)
<input type="checkbox"/>	LS_Jet_kero	daily (business days)

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2. Based on the following delivery point _____ . The Heat Rate for use with the Fuel Index Price for the Resource to calculate Marginal Fuel Cost is set forth in the following table[s for each fuel type] expressed in MMBTU/MWh]. The table shows the incremental heat rate (include a minimum of four data points, ranging from zero output and including Ecomin and Ecomax values). Dual fuel units should provide this data on a fuel specific basis.
 3. Provide information about any other components of the marginal fuel cost, including variable transportation and Fuel Cost Ancillaries, if any.
 4. Provide information on Variable O&M for energy production, consistent with the study supporting the Annual Fixed Revenue Requirement as shown in Schedule 3. (Dual fuel units should provide this data on a fuel specific basis).
 5. Provide information about any other components of marginal costs, including emission allowance adders and operating permit adders, if any. (Express NO_x, SO₂, CO₂ and any other emission rates in Lbs/MMBTU. (Dual fuel units should provide this data on a fuel specific basis).
 6. Provide information about Start-Up Costs. Stipulated Start-up costs are variable costs that are incurred prior to synchronization and when operating below EcoMin, to the extent those variable costs are not recovered in the energy market or NCPC, as shown in the following table(s) for each fuel type:
 - a. (on a fuel specific basis): fuel input (mmBtu's);
 - b. O&M component for starts, consistent with the study supporting the Annual Fixed Revenue Requirement as shown in Schedule 3, itemized; and,
 - c. "Start-Up other", itemized, if applicable
 7. Provide information about No-Load Costs. No-load costs are those costs that vary in the service hours and are independent of output and are as shown in the following table(s) for each fuel type:
 - a. (on a fuel specific basis): input (mmBtu's);
 - b. No-Load O&M component for Service Hours, consistent with the study supporting the Annual Fixed Revenue Requirement as shown in Schedule 3, itemized; and
 - c. No-Load Other, itemized, if applicable.For example [add columns for other parameters, including CO₂ emission rate as necessary]:

SAMPLE TABLE

Fuel Type

Data Source Daily Price Survey midpoint

Delivery Point _____

Net Output (may have up to 10 segments)	Marginal Heat Rate (mmBTU/MWh)	Fuel Ancillaries (\$/kWh)	Variable O&M (\$/MWh)	NOx Emission Rate (lbs/MWh)*	SO2 Emission Rate (lbs/MWh)**
0 MW to EcoMin of e.g., 30 MW	10.200	N/A	\$1.84	2.55	0.31
31 MW - 60 MW	10.750	N/A	\$1.84	2.69	0.32
61 MW - 90 MW	11.600	N/A	\$1.84	2.90	0.35
90 MW – Eco Max e.g., 107 MW	12.300	N/A	\$1.84	3.08	0.37

Start-Up	Fuel (mmBTU)	Start-Up Fuel Ancillaries (\$/mmBTU)	Start-Up O&M (\$/start)	NOx Emission Rate (lbs/start)*	SO2 Emission Rate (lbs/start)**
Cold	400	N/A	\$0	100	12
Intermediate	350	N/A	\$0	88	11
Hot	300	N/A	\$0	75	9

No Load Conditions	No Load Fuel (mmBTU/hr)	Start-Up Fuel Ancillaries (\$/mmBTU)	No Load NOx Emission Rate (lb/hr)*	No Load SO2 Emission Rate (lb/hr)*
	81	N/A	20.25	2.43

- As referenced in Section 3.4, “Supply Offers,” the NOx Allowance Adder shall be calculated as: the appropriate NOx Emission Rate from the table above times the daily quoted price of average trades in \$/ton as posted by Evolution Markets, LLC on <http://www.evomarkets.com>, divided by 2000 (lbs/ton).
- As referenced in Section 3.4, “Supply Offers,” the SO2 Allowance Adder shall be calculated as: the appropriate SO2 Emission Rate from the table above times the daily quoted price of average trades in \$/ton as posted by Evolution Markets, LLC on <http://www.evomarkets.com>, divided by 2000 (lbs/ton).
- For use in calculating the Resource's Stipulated Bid Costs, the NOx emission rate shall only be included for bids submitted for operation during the NOx season (May through September of each calendar year).

* NOx Emission Rate = [e.g., 0.25] lb/mmmbtu on natural gas

** SO2 Emission Rate = [e.g., 0.03] lb/mmmbtu on natural gas

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SCHEDULE 2

RESOURCE CHARACTERISTICS

[RESOURCE NAME]

(NOTE: for combine cycles, provide the following for each mode of operation)

EcoMin: _____

Qualified Capacity* _____ MW (Winter) _____ MW (Summer)

EcoMax (emergency) (as applicable gas/oil: _____ MW

Ramp Rate (normal): _____ MW/Minute

Ramp Rate (emergency): _____ MW/Minute

Minimum Run Time: _____ hours

Minimum Shutdown Time: _____ hours

Notification Time (Cold)** _____ hours

Start-Up Time (Cold Conditions)***: _____ hours

Notification Time (Warm)** _____ hours

Start-Up Time (Warm Conditions)***: _____ hours

Notification Time (Hot)** _____ hours

Start-Up Time (Hot Conditions) _____ hours

Start-Up Profile _____ (MWh) _____ (MMBTU)

Shut-Down Profile _____ (MWh) _____ (MMBTU)

*Qualified Capacity is the amount of capacity a resource may provide in the summer or winter in a Capacity Commitment Period, as determined in the Forward Capacity Market qualification process (Market Rule III.1.3.2) including challenge provisions as appropriate.

** "Notification Time" is defined consistent with eMarket specifications as the time required from an ISO-issued start order to the synchronization of the Resource.

*** "Start Up Time" is defined consistent with eMarket specifications as the time required from synchronization of the Resource to the time the Resource reaches its EcoMin level of output and available for ISO dispatch.

For each day, Lead Participant shall use commercially reasonable efforts to cause the submittal of Supply Offers for hourly values of EcoMax and EcoMin that are consistent with ambient atmospheric conditions and equipment operating conditions.

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SCHEDULE 3

SUPPLEMENTAL CAPACITY PAYMENT

For each Obligation Month during the Term, a Supplemental Capacity Payment shall be calculated for the Resource[s] as set forth below. The Supplemental Capacity Payment shall be charged to Network Load in the affected Reliability Region.

Section III.13 references are to Market Rule 1, Section III.13 – Forward Capacity Market.

The Annual Fixed Revenue Requirement (AFRR) for the [generating station / Resource] is \$_____.

The Annual Fixed O&M Expenses for the [generating station / Resource] is \$_____.

The AFRR is the cost-of-service for the [generating station / Resource], including fixed operation and maintenance expenses, depreciation, amortization, taxes and return, as accepted by the Commission. The Annual Fixed O&M Expenses is the fixed operating & maintenance expense component of the AFRR. Where the AFRR and the Annual Fixed O&M Requirement have been determined for a generating station that is composed of two or more Resources, each shall be allocated to the Resources pro-rata according to their Capacity Supply Obligations as of the Effective Date. [list the allocated amounts below.]

(Part 1)

Supplemental Capacity Payment =

Plus: Maximum Monthly Fixed Cost Payment
Less: Total COS Availability Penalties for the Obligation Month
Less: Revenue Credit for the Obligation Month

Providing that for any given Capacity Commitment Period the monthly Supplemental Capacity Payments are capped so that the cumulative value of Supplemental Capacity Payments plus Revenue Credits plus Availability Credits (as defined in Section III.13.7.2.7.1.4) shall not exceed the AFRR (subject to the additional provisions of Part 5 if applicable).

In the event that the Supplemental Capacity Payment would otherwise be less than zero in any Obligation Month, the Supplemental Capacity Payment for that Obligation Month shall be zero and any unapplied COS Availability Penalty or Revenue Credit shall roll-forward for crediting in a future Obligation Month. For the last Obligation Month of the Term, the ISO shall charge the Owner for any unapplied roll-forward amount and shall refund that amount to Network Load (subject to the additional provisions of Part 5 below if applicable).

(Part 2)

Maximum Monthly Fixed Cost Payment = $AFRR / 12$
COS Price = $Maximum Monthly Fixed Cost Payment / Capacity Supply Obligation$

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(Part 3)

The Total COS Availability Penalty for the Obligation Month equals the sum of the COS Availability Penalties for each Shortage Event that has been defined and recognized in accordance with Sections III.13.7.1.1.1 through III.13.7.1.1.4. The COS Availability Penalty for each Shortage Event shall be determined in accordance with the provisions of Section III.13.7.2.7.1.2, except that it shall be based on the COS Price instead of the Capacity Clearing Price and the Annual Fixed Revenue Requirement instead of the Resource's Annualized FCA Payment. The per day and per month COS availability penalties assessed shall be subject to the caps set forth in Section III.13.7.2.7.1.3, except that the caps shall be based on the Annual Fixed Revenue Requirement rather than the Resource's Annualized FCA Payment. The sum of Total COS Availability Penalties for each Capacity Commitment Period shall not exceed the Annual Fixed Revenue Requirement.

(Part 4)

The purpose of the Revenue Credit is to recognize that the Resource has earned revenues from sources other than this Supplemental Capacity Payment. The Supplemental Capacity Payment is reduced accordingly so that the Resource receives a total payment for its capacity during the Commitment Period equal to its Annual Fixed Revenue Requirement reduced for any COS Availability Penalties.

Revenue Credit for the Obligation Month =

- Plus: FCA Payment for the Obligation Month
- Less: PER Adjustment for the Obligation Month
- Less: Availability Penalty for the Obligation Month
- Plus: All other revenues related to the Resource (i.e. all revenues except for revenues from the New England Forward Capacity Market) that are in excess of Stipulated Offer Costs. Provided, however, any Availability Credits earned according to the provisions of Section III.13.7.2.7.1.4 shall be ignored for calculating this Revenue Credit and shall inure to the benefit of the Owner subject to the provisions of Part 1.

Where the FCA Payment, PER Adjustment and Availability Penalty for the Obligation Month are the amounts calculated in the normal monthly settlement based on the Capacity Clearing Price for the Capacity Zone and the provisions of Section III.13.7.

(Part 5)

If this Agreement terminates other than at the end of a Capacity Commitment Period:

- 5.1 The ISO shall credit the Resource for Availability Penalties and COS Availability Penalties during that Capacity Commitment Period that are in excess of the pro-rated Annualized FCA Payment and AFRR respectively. The ISO shall charge the appropriate Market Participants defined in Section III.13.7.3 and Network Load in the Reliability Region according to which entities had received the benefit of these excess Availability Penalties and COS Availability Penalties.
- 5.2 The monthly Supplemental Capacity Payments are capped so that the cumulative value of Supplemental Capacity Payments plus Revenue Credits plus Availability Credits (as defined in Section III.13.7.2.7.1.4) shall not exceed the prorated AFRR.

(Part 6)

While the roll-forward provisions of Part 1 provide that the Supplemental Capacity Payment cannot result in a monthly charge to the Resource because of a Supplemental Capacity Payment that calculates to a negative amount, nothing in this Agreement provides that the sum of all charges and credits for the Resource cannot result in a net amount owed to the ISO for any Obligation/Operating Month.

Issued by: Raymond W. Hepper,
Vice President and General Counsel
Issued on: November 7, 2008

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issued October 28, 2008, 125 FERC ¶ 61,102 (2008)

[Sheet Nos. 8236-8299 are reserved for future use.]

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