



**DIRECT TESTIMONY**

**OF**

**MADISON N. MILHOUS, JR.**

**December 9, 2009**

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1 **I. Introduction**

2 **Q. Please state your name and business address.**

3 **A.** My name is Madison N. Milhous, Jr., and my business address is 100 East Old Country  
4 Road, Hicksville, New York 11801.

5 **Q. Please state your position with National Grid USA (“National Grid”).**

6 **A.** I am Director of Wholesale Market Relations for the Energy Portfolio Management  
7 organization at National Grid. In this capacity, I am responsible for monitoring and  
8 engaging in developments in market structure and operations in the New York  
9 Independent System Operator (“NYISO”) and ISO New England Inc. (“ISO-NE”) markets,  
10 and in other regulatory and policy developments that directly affect electric  
11 power procurement. I represent National Grid on the NYISO Business Issues Committee  
12 and its working groups. Recently, I served as acting director of Electric Supply and  
13 Distributed Generation, which is responsible for electric supply procurement for National  
14 Grid’s four distribution companies. I continue to work with that department on electric  
15 power market policy issues.

16 **Q. Please describe your educational background.**

17 **A.** I have Bachelor of Engineering and Master of Science degrees in Aerospace Engineering  
18 from Georgia Institute of Technology and a Master of Science Degree in Marine Science  
19 from New York’s Stony Brook University.

20

1 **Q. What is your professional background?**

2 **A.** In my prior assignment, I handled the market relations function for KeySpan Energy  
3 Supply, which was responsible for fuel supply and electric energy trading for the  
4 generating units owned by KeySpan-Ravenswood, LLC (“Ravenswood”). I represented  
5 Ravenswood on various committees and working groups of the NYISO, and provided  
6 direct technical support to the electric trading operation. In 2006, I served as chair of the  
7 NYISO Operating Committee. Previously, I was Director of the Power Engineering  
8 Department, which provided engineering services for Ravenswood, and other KeySpan  
9 generating units. Prior to that position, I was Director of the Electric Planning and  
10 Forecasting Department, which provided resource and transmission and distribution  
11 system planning services to the Long Island Power Authority. Preceding this assignment,  
12 I was the Manager of Environmental Engineering at the Long Island Lighting Company,  
13 a predecessor company to KeySpan. I am registered as a Professional Engineer in New  
14 York and South Carolina. I am familiar with wholesale power pricing, ISO market  
15 structures and operations, load forecasting, power generation equipment, environmental  
16 regulations and permitting, and electric transmission and distribution.

17 **Q. What is your experience with power purchase agreements (“PPAs”) and pricing of**  
18 **capacity, energy and renewable energy certificates (“RECs”)?**

19 **A.** I have been involved in evaluation and operation of power projects from a resource  
20 planning and market operations perspective. As Director of Electric Planning and  
21 Forecasting, I managed a group that evaluated power supply resource options for the

1 Long Island Power Authority, including transmission alternatives. As Director of  
2 Regulatory Affairs for KeySpan Energy Supply, I represented the interests of KeySpan  
3 Ravenswood in, among other things, development of analyses to support capacity and  
4 energy trading operations. I also supported the KeySpan Energy Development group in  
5 analysis of power supply projects, including responses to RFPs, and the acquisition and  
6 sale of power generation assets.

7  
8 For a period of approximately one year, I was responsible for the power supply  
9 procurement function for the four National Grid distribution companies: The  
10 Narragansett Electric Company, Massachusetts Electric Company, Granite State Electric  
11 Company, and Niagara Mohawk Power Corporation. This work included the purchase of  
12 RECs for the Massachusetts, Rhode Island, and New Hampshire companies. I am  
13 currently leading National Grid's participation in the joint effort of the Massachusetts  
14 electric distribution companies and the Massachusetts Department of Energy Resources  
15 in a solicitation process leading to long-term contracts for renewable energy resources,  
16 under the provisions of the Massachusetts Green Communities Act.

17 **Q. Have you previously testified before the Rhode Island Public Utilities Commission**  
18 **(“Commission”)?**

19 **A.** Yes. I testified in RIPUC Docket No. 4041, the National Grid Standard Offer  
20 Procurement Plan proceeding, regarding how National Grid would meet the Renewable  
21 Energy Standard. I also testified in RIPUC Docket No.4050, the Renewable Resource

1 Adequacy proceeding, regarding adequacy of renewable energy supplies for the year  
2 2011.

3 **Q. Have you testified before any other state regulatory agencies?**

4 **A.** Yes. I have testified before the New York State Public Service Commission regarding  
5 electric system planning and wholesale electric market activities, and before the New  
6 York State Department of Environmental Conservation regarding environmental matters.

7 **Q. What is the purpose of your testimony in this proceeding?**

8 **A.** The purpose of my testimony is to describe the history and status of the negotiations of  
9 the Deepwater Wind Block Island, LLC (“Deepwater”) PPA; to describe the pricing  
10 under the PPA; and to explain why National Grid supports the approval of the PPA. The  
11 PPA has gone through various iterations and two versions plus the signed PPA have been  
12 filed with the Commission. For ease of description I will use references to the October 15  
13 version of the PPA and the November 18 version of the PPA to describe the prior  
14 versions that were filed on those respective dates, and I will refer to the signed PPA  
15 (reflecting changes since November 18) simply as the PPA, which is included as Exhibit  
16 1 to my testimony.

17 **Q. What was your involvement with this project?**

18 **A.** I was the principal National Grid representative involved in the development of the  
19 request for proposals, the review of the response to that request by Deepwater, the  
20 development of the initial draft PPA, and the negotiation of the PPA through to

1 execution, including the review of Deepwater's pricing proposals, and the related  
2 technical assistance and recommendations to National Grid's senior management.

3 **Q. Are you sponsoring attachments to your testimony?**

4 **A.** Yes. The following Exhibits are included with my testimony:

- 5 1. Executed PPA, dated as of December 9, 2009
- 6 2. Letter from Rhode Island Governor Donald L. Carcieri to the Rhode Island Public
- 7 Utilities Commission dated October 29, 2009
- 8 3. November 2, 2009 Deepwater price proposal
- 9 4. Summary of pricing proposals from Deepwater
- 10 5. Confidential ESAI price forecast
- 11 6. ESAI methodology for REC price forecast
- 12 7. Deepwater price comparison to ESAI and Synapse forecasts
- 13 8. Synapse Report
- 14 9. Estimated Above Market Costs of the Deepwater PPA, and Hypothetical Example for 90
- 15 MW Competitive Solicitation
- 16

17 **II. National Grid's Support of the PPA**

18 **Q. What is National Grid's position regarding Commission approval of the PPA?**

19 **A.** National Grid supports Commission approval of the PPA, subject to two important  
20 caveats or observations. First, the Commission and customers need to recognize that the  
21 price for the bundled energy in this PPA is relatively high compared to pricing we believe  
22 is likely to be available for potential renewable generation choices in the market and the  
23 contract has a twenty-year term. Thus, customers will be paying a significant premium  
24 for this project. National Grid acknowledges that there are valid policy reasons for  
25 approving the PPA. The foremost of these reasons is to foster the development of  
26 offshore wind power and the benefits that come with it through this relatively small-scale  
27 demonstration project that could be one of the first such facilities in the nation to achieve

1 commercial operation. If the State of Rhode Island desires to meet climate change  
2 objectives through the development of offshore wind, this small demonstration project is  
3 a reasonable place to start. This policy goal underlies Section 39-26.1-7 of Rhode Island  
4 law, and this project appears consistent with the intent of that statute. Additionally,  
5 development of this project will result in the installation of a transmission cable to Block  
6 Island, thereby improving the security of energy supply to the customers there, also  
7 consistent with the intent of the statute.

8  
9 The second caveat or observation is that National Grid's support for the PPA is in the  
10 context of a small-scale project that is being developed consistent with the intent of the  
11 statute. The particular pricing and non-price terms of the PPA are not, and should not be  
12 considered, a precedent for other projects (either with Deepwater or with any other  
13 party), and certainly not for larger scale renewable energy projects, for which pricing  
14 should be lower. National Grid requests that, if the Commission approves the PPA, it do  
15 so only with an express statement that the particular terms and conditions of the PPA are  
16 not precedential for other potential renewable energy projects.

17 **Q. Why is it so important not have this PPA establish a precedent?**

18 **A.** This PPA was negotiated for a small-scale demonstration project that was unable to  
19 achieve the economies of scale that one might expect from larger wind farms. Later in  
20 my testimony I will explain why it is critical that the pricing not stand as a precedent, by  
21 showing how much the cost to customers would be if National Grid's obligation to

1 contract for 90 megawatts (“MW”) of renewable generation was met through projects  
2 that included pricing that was, on average, the same as included in this Deepwater PPA.

3  
4 Stated another way, if the Commission applies a “commercial reasonableness” standard  
5 to this PPA in determining whether it should be approved, the Commission must be clear  
6 that it is commercially reasonable only in the context of a limited demonstration project  
7 that was statutorily capped at eight wind turbines or 30 MW. The project also has other  
8 special considerations because it was singled out under the recently passed legislation. It  
9 is National Grid’s view, however, that the terms and pricing in this PPA by no means  
10 represent what an experienced power market analyst would expect to see in transactions  
11 involving newly developed renewable projects generally, where the complexities  
12 associated with a small-scale demonstration such as this are not present.

13  
14 **III. The RFP and Response**

15 **Q. Why was the RFP issued?**

16 **A.** National Grid issued a request for proposals on July 31, 2009 in response to the statutory  
17 requirement of Section 39-26.1-7 of Rhode Island law to solicit proposals for the  
18 development of one newly developed renewable energy resource project of 10 MW or  
19 less, that includes a proposal to enhance the electric reliability and environmental quality  
20 of the Town of New Shoreham (Block Island) (the “RFP”). The RFP and the October 15  
21 version of the PPA were filed with the Commission on October 15, 2009, as Exhibit 1

1 and Exhibit 2, respectively, to National Grid's filing that commenced this proceeding.  
2 On November 18, 2009, National Grid filed the November 18 version of the PPA, which  
3 reflected additional negotiations between National Grid and Deepwater after the October  
4 29 pre-hearing conference in this docket.

5  
6 **IV. Negotiations of the PPA**

7 **Q. Please describe the timeline and process for the negotiation of the PPA.**

8 **A.** National Grid received Deepwater's initial response on August 31, 2009. Within about a  
9 week, on September 8, 2009, National Grid provided Deepwater with a model PPA to  
10 negotiate. On September 29, 2009, Deepwater provided a detailed mark-up of the PPA  
11 and preliminary pricing schedules. On October 8, 2009, Deepwater proposed two  
12 alternative pricing methods, but neither pricing schedule met the requirements of the RFP  
13 for a fixed price proposal. Deepwater's schedules had open-ended pricing adjustments  
14 for variable operation and maintenance costs ("O&M") and capacity factors of the  
15 proposed generating facility, which would put the risk for such costs onto National Grid's  
16 customers. By the October 15, 2009 deadline for filing a PPA with the Commission,  
17 several issues remained unresolved, including price. National Grid described those issues  
18 in its October 15 filing letter that it included with the October 15 version of the PPA.

19  
20

1 **Q. Please describe the extended negotiation process that occurred after the October 15,**  
2 **2009 filing.**

3 **A.** In its filing with the Commission of a Motion to Intervene on October 16, Deepwater  
4 included a letter from Deepwater to National Grid urging a resumption of negotiations.  
5 In a letter filed with the Commission on October 21, 2009, National Grid stated a  
6 willingness to resume negotiations if Deepwater provided a true fixed price proposal. At  
7 the prehearing conference on October 29, 2009, the Commission established a schedule  
8 that would allow time for additional negotiation. The Commission required that a revised  
9 PPA be filed on November 13, and that testimony be filed on November 25 (the  
10 Commission later extended these deadlines to November 18 and December 9,  
11 respectively). There were two other significant events on October 29. First, the Rhode  
12 Island Legislature passed an amendment to Section 39-26.1-7 which increased the  
13 permissible size of the project to eight wind turbine generators having a combined rating  
14 of no more than 30 MW. Second, Governor Carcieri sent a letter to the Commission  
15 (included as Exhibit 2 to my testimony) in which he urged further negotiation, but also  
16 stated that the energy price in the October 15 version of the PPA was excessive.

17  
18 In a letter dated November 2, 2009, Deepwater provided an “Outline of Revised Pricing  
19 Proposal” (Exhibit 3 to my testimony), which stated a fixed priced of  
20 \$275.41/megawatthour (“MWh”) (27.5 cents per kWh) in 2013 (2013 is the projected  
21 first full year of commercial operation of the facility), with no O&M cost adjustment or

1 capacity factor adjustment. In its November 2 letter, Deepwater also emphasized the  
2 importance of other PPA terms to its ability to finance its project, particularly the  
3 treatment of force majeure events, including outages of the transmission cable between  
4 Block Island and the mainland. At a November 6, 2009, meeting between National Grid  
5 and Deepwater, Deepwater further revised its pricing schedule to \$253.60/MWh (25.3  
6 cents per kWh) in 2013.

7  
8 At that November 6 meeting, National Grid asked Deepwater to develop a mechanism for  
9 sharing in the benefits if a capacity factor higher than 40 percent, on which the pricing is  
10 based, were realized in operation. A specific concept was briefly discussed, which had  
11 first been suggested by National Grid in follow-up to the pre-bid meeting of August 10,  
12 2009. During the following week, National Grid: (i) told Deepwater that further  
13 reduction in the price was expected, particularly in connection with the potential  
14 availability of a United States Department of Energy (“DOE”) loan guaranty and the  
15 corresponding reductions in Deepwater’s cost of capital; (ii) suggested a specific  
16 procedure for tolling the annual escalation of Deepwater’s bundled price if Deepwater  
17 exercised a right to extend the term of the PPA; and (iii) reiterated the need for a  
18 mechanism to share in the benefits of a higher capacity factor.

19  
20

1 **Q. Please describe the negotiations between National Grid and Deepwater since the**  
2 **filing of the November 18 version of the PPA.**

3 **A.** On November 20, Deepwater (through D.E. Shaw, its principal investor) sent a mark-up  
4 of the November 18 version of the PPA proposing two substantive changes to the version  
5 filed with the Commission. First, Deepwater proposed to lower its bundled price for  
6 energy, capacity and RECs to \$249/MWh (24.9 cents per kWh) in 2013 dollars. Second,  
7 Deepwater proposed a mechanism for sharing any improvement in the capacity factor  
8 over the 40% capacity factor assumed in the pricing. That mechanism essentially tracks  
9 cumulative production over the term of the PPA and splits the benefits of better than  
10 expected production over the term of the PPA, 50/50, between National Grid and  
11 Deepwater at the end of each contract year. Any credits resulting from this mechanism in  
12 any contract year would be applied to the invoices in the next contract year, and no  
13 credits would be awarded for overproduction in the last contract year presumably because  
14 there is no ability to apply that credit in the next year.

15 On December 4, 2009, Deepwater further lowered its pricing by \$5/MWh to a price of  
16 \$244/MWh (24.4 cents per kWh) in 2013, with the same 3.5% annual escalation factor.  
17 After that date, the parties resolved the few remaining non-price issues. On December 9,  
18 2009 the parties signed the PPA.

19

20

1 V. **Pricing**

2 Q. **Please describe the pricing in the PPA.**

3 A. The pricing schedule in the PPA sets a unit price for bundled renewable energy (energy,  
4 capacity and RECs) of \$235.75/MWh for 2012, subject to an escalation factor of 3.5%  
5 each year. This escalates to \$244/MWh (or 24.4 cents per kWh) in 2013, which is the  
6 first full year of expected operation. Unlike the pricing schedule in the October 15  
7 version of the PPA, there are no adjustments for O&M costs or for worse-than-expected  
8 capacity factors. In order to resolve the issues of transmission cable outages and of force  
9 majeure events, the parties modified the pricing schedule in Exhibit E of the PPA to  
10 account for extensions of the PPA term, but to toll escalations of the price during the  
11 events that trigger such extensions.

12 Q. **How does the pricing in the PPA compare with the pricing in the October 15 and**  
13 **November 18 versions of the PPA?**

14 A. The pricing in the PPA is \$244/MWh in 2013 (24.4 cents per kWh), in comparison to  
15 \$307.53/MWh (30.7 cents per kWh) for the same year in the October 15 version of the  
16 PPA, a change of approximately \$63.50/MWh (6.35 cents per kWh), and compared to  
17 \$253.60/MWh in the November 18 version of the PPA, a change of approximately  
18 \$10/MWh (1 cent per kWh). The pricing in the October 15 version of the PPA was based  
19 on a project comprised of six 3.6 MW wind turbine generators, and the pricing in the  
20 PPA is based on a project comprised of eight 3.6 MW turbines. In both cases a 40%  
21 capacity factor was assumed. On October 8, 2009 Deepwater had supplied National Grid

1 with pricing of \$271.16/MWh (27.1 cents per kWh) for an eight turbine project. Thus, as  
2 anticipated, much of the reduction in unit pricing could be directly attributable to the  
3 increased size of the project, in this case approximately 60%. The pricing in the PPA  
4 results in a total estimated above market cost of approximately \$390 million over the  
5 twenty year term, in comparison to an estimated \$430 million for the six turbine project  
6 under the October 15 version of the PPA.

7  
8 Exhibit 4 to my testimony summarizes all of the relevant price schedules provided to  
9 National Grid by Deepwater from just prior to the October 15 filing, to the most recent  
10 pricing schedule contained in the PPA. This Exhibit 4 also includes the indicative pricing  
11 that Deepwater provided to the Rhode Island Office of Energy Resources in 2008.

12 **Q. National Grid's November 18 filing letter discussed a DOE loan guaranty and its**  
13 **potential to affect pricing under the PPA. Please explain that pricing issue.**

14 **A.** In an effort to assure that all factors that could have a favorable impact on pricing have  
15 been taken into account, National Grid asked that Deepwater consider the impact of a  
16 possible DOE loan guaranty. While National Grid is not in a position to directly assess  
17 this impact, it was recognized that a DOE loan guaranty would lower the interest rates  
18 required by Deepwater's lenders, and potentially alter the financing structure (i.e., debt to  
19 equity ratio), both of which would reduce Deepwater's cost of capital for its project. On  
20 November 20, 2009, Deepwater made an additional price adjustment which put the 2013  
21 bundled energy price at approximately \$249/MWh (24.9 cents per kWh). Deepwater

1 attributed this reduction to the availability of a DOE loan guaranty (as stated in their  
2 response to a data request in this proceeding from the Conservation Law Foundation  
3 (CLF 1-2)).

4 **Q. National Grid's November 18 filing letter also discussed the capacity factor for the**  
5 **project and its potential to affect pricing under the PPA. Please explain that pricing**  
6 **issue.**

7 **A.** National Grid believes that its customers must share, to a significant extent, in the  
8 benefits of an offshore wind project that performs better than the projections that form the  
9 basis for Deepwater's pricing proposals. National Grid also recognizes that Deepwater  
10 should retain some portion of those benefits in order to provide a proper incentive to  
11 maximize the project's production. The mechanism included in the PPA accomplishes  
12 the benefit sharing that National Grid was trying to achieve for its customers.

13 **Q. Has National Grid compared the pricing under the PPA to a forecast of relevant**  
14 **market prices?**

15 **A.** Yes. National Grid has done an analysis based on price projections from Energy Security  
16 Analysis, Inc. ("ESAI") and Synapse Energy Economics, Inc. ("Synapse"). National  
17 Grid used the same price projections to analyze the pricing under the PPA for six, seven  
18 and eight turbine projects, for contract terms of fifteen and twenty years. National Grid's  
19 analysis determined the projected above market cost of the project using the long term  
20 forecasts of ESAI and Synapse.

21

1 National Grid engaged ESAI to develop a long range price forecast of energy, capacity  
2 and RECs, which is included as Confidential Exhibit 5 to my testimony. National Grid  
3 has an ongoing contract with ESAI for such services, and the price forecast for energy  
4 and capacity was developed under that arrangement. National Grid found that long term  
5 forecasts for REC supply and price are not readily available, and ESAI agreed to develop  
6 such a forecast. Under National Grid's arrangement with ESAI, the energy, capacity and  
7 REC forecasts are considered proprietary, and are being provided only to the  
8 Commission and the Division under confidentiality protection. A description of the  
9 methodology for the forecast of REC prices is provided, as Exhibit 6 to my testimony.

10  
11 The REC price forecast is based on a "bottom-up" analysis of supply and demand and  
12 reflects the same tightening of supply in 2011-2012, as identified by PA Consulting in  
13 National Grid's filing in RIPUC Docket 4050, Renewable Resource Adequacy. The  
14 energy prices are provided as monthly peak/offpeak prices for 2010 thru 2019, and as  
15 annual 7x24 prices for 2010 through 2031. A forecast of capacity prices under the ISO-  
16 NE Forward Capacity Market was provided by capability year, and this was converted to  
17 an annual forecast to line up with the energy and REC forecasts.

18  
19 The pricing included in the PPA is approximately 2 times the ESAI forecast for energy  
20 and RECs in the year 2013, escalating to approximately 2.9 times the forecast at the end  
21 of a twenty year term. This price comparison is shown in Exhibit 7 to my testimony.

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National Grid also relied upon a 2009 report by Synapse (the “Synapse Report”), entitled “Avoided Energy Supply Costs in New England”, released on August 21, 2009. This report was prepared for the Avoided-Energy-Supply-Component (AESC) Study Group, a group representing all New England utilities, and is used for evaluating demand side management and energy efficiency programs. While the intended end use of this report differs from the ESAI forecast, the Synapse Report nevertheless contains an underlying wholesale energy price forecast by ISO-NE load zones, as well as a capacity and REC price forecast for New England. The Synapse Report, which is included as Exhibit 8 to my testimony, provided a second corroborating basis for evaluating the Deepwater pricing schedules relative to a forecast of market prices.

The energy forecast in the Synapse report is presented in a seasonal peak/offpeak format for the years 2009-2039, where summer is defined as June-September, and winter the remaining eight months of the year. The pricing included in the PPA is 2 times the Synapse forecast for energy and RECs in 2013, escalating to approximately 2.6 times in 2032. This price comparison is also shown in Exhibit 7 to my testimony.

For the energy output associated with the P50 capacity factor of 40% (P50 means that there is a 50/50 probability of the occurrence of an event or condition), the cost of bundled renewable energy under the various Deepwater pricing schedules was calculated

1 annually, and compared to the market forecast of energy, capacity and RECs for this  
2 same energy output. For valuation of capacity, a summer capacity factor of 28%, as  
3 estimated in Deepwater's proposal, was used to determine the qualified capacity,  
4 consistent with the ISO-NE convention for intermittent resources.

5 **Q. Please describe the results of National Grid's analysis of the projected above market  
6 cost of the Deepwater pricing.**

7 **A.** Two conclusions can be drawn from this analysis:

8 (1) the total cost of bundled energy over the contract term is over twice the  
9 projected market value of the products, and approximately \$390 million  
10 above market cost of generic energy, capacity and RECs; and

11 (2) the annual above market cost over a twenty year term is significantly  
12 lower, than over a fifteen year term, and on a net present value basis, the  
13 total cost of a twenty year contract only slightly exceeds that of a fifteen  
14 year contract (this analysis supports a twenty year contract term, which  
15 Deepwater indicated was important for financing).

16 **Q. What is the total estimated cost of the power under the Deepwater PPA?**

17 **A.** Based on the energy production at the P50 capacity factor, and assuming no transmission  
18 line outages or force majeure events that would extend the term of the PPA, the estimated  
19 total cost of power is approximately \$700 million over the twenty-year term, as a  
20 cumulative sum in nominal dollars. In comparison to the ESAI and Synapse forecasts,  
21 this is approximately \$390 million over the estimated market cost of the same quantity of

1 energy, capacity and RECs for the same time period. The estimated annual above market  
2 cost is approximately \$12 million in 2013, escalating to approximately \$30 million in  
3 2032.

4 **Q. Can you explain why it is important for the Deepwater PPA not to serve as a**  
5 **precedent for future projects?**

6 **A.** Yes. If one were to assume, hypothetically speaking, that the price of \$244 per  
7 megawatt-hour or 24.4 cents per kilowatt-hour was a price that one would expect to  
8 obtain, on average, from newly developed renewable energy resources, and National Grid  
9 entered into contracts with developers for 10% of its current load at that price, the total  
10 amount of above market costs would be substantial. Exhibit 9 to my testimony is a  
11 schedule showing this effect. This illustration shows the total above market cost for the  
12 hypothetical year 2013 would be approximately \$100 million. That cost would  
13 effectively represent a rate increase in that amount to customers which would grow over  
14 time.

15 **Q. What is the significance of using 10% for this hypothetical?**

16 **A.** It is my understanding that the law requires the Company to solicit long term contracts  
17 from renewable generation equal to at least 90 MW, using a statutory definition that takes  
18 into account the capacity factor of each project. That equates to 788,400 megawatt-hours  
19 or approximately 10% of National Grid's current load. I have shown this calculation for  
20 illustrative purposes only, to put into context the pricing offered by Deepwater in this  
21 contract. If the Commission approves the contract, it is very important that the

1 Commission make clear that this contract does not set a precedent for future contracts.  
2 Otherwise, if this pricing sets the bar for future pricing, the impact on Rhode Island  
3 electric rates would be significant, given the relatively small customer base that exists in  
4 Rhode Island.

5 **Q. Has National Grid done any price comparisons for the PPA?**

6 **A.** Yes. The Company engaged the services of Cliff Hamal, of LECG, an expert services  
7 and consulting firm, to perform a price comparison. The comparisons are described in  
8 his pre-filed testimony.

9  
10 **VI. Transmission Cable**

11 **Q. Does the pricing in the PPA include the cost of the undersea cable?**

12 **A.** No. The pricing in the PPA does not include the cost of the cable between Block Island  
13 and the mainland. Mr. David Tufts provides a calculation of the revenue requirement  
14 associated with that project. These costs also will be borne by customers should  
15 appropriate approvals be obtained and National Grid elects to own the cable. However,  
16 should that transmission cable not be owned and operated by National Grid, there is the  
17 potential that the still unknown cost for that cable would have to be recovered through the  
18 PPA, imposing a significant increase to the pricing. Up until recently National Grid also  
19 had a PPA-related concern regarding operation of the transmission cable. Prior to  
20 October 15, Deepwater had proposed language in the PPA that would have National Grid  
21 continue to pay for energy output in the event of an outage of this cable, except when

1           caused by a force majeure event. In the negotiations since October 15 that issue was  
2           removed from the PPA.

3   **Q.    Does this conclude your testimony?**

4   **A.    Yes.**



**EXHIBITS OF**  
**MADISON N. MILHOUS, JR.**

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**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID**  
**AND**  
**DEEPWATER WIND BLOCK ISLAND, LLC**

**As of December 9, 2009**

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Exhibit C	Form of Progress Report
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Exhibit E	Products and Pricing
Exhibit F	Form of Certification of Extension and New Escalation Date

## POWER PURCHASE AGREEMENT

**THIS POWER PURCHASE AGREEMENT** (this “**Agreement**”) is entered into as of December 9, 2009 (the “**Agreement Date**”), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (“**Buyer**”), and Deepwater Wind Block Island, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

**WHEREAS**, Seller is developing the Block Island Wind Farm, a demonstration scale wind farm located off the coast of Block Island, Rhode Island, which is more fully described in Exhibit A hereto (the “**Facility**”), which shall qualify as a Newly Developed Renewable Energy Resource (hereafter defined);

**WHEREAS**, Buyer is required under R.I.G.L. §39-26.1-7 to solicit proposals for a long-term contract for the purchase of energy, capacity and renewable energy certificates from a renewable generator meeting the requirements of that statute; and

**WHEREAS**, Buyer and Seller desire to enter into this Agreement whereby Buyer shall purchase from Seller all Products (as defined herein) generated at or associated with the Facility;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### 1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Defined terms in this Agreement shall include in the singular number the plural and in the plural number the singular. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

Unless the context requires otherwise, any reference in this Agreement to any document shall mean such document and all schedules, exhibits, and attachments thereto as amended and in effect from time to time. The words “hereof,” “herein,” “hereto” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the term “including” is used herein in connection with a listing of items included within a prior reference, such listing shall be interpreted to be illustrative only, and shall not be interpreted as a limitation on or exclusive listing of the items included within the prior reference. Captions, titles and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, such first Person.

“**Agreement Date**” shall have the meaning set forth in the first paragraph hereof.

**“Amendment Regulatory Approval”** shall have the meaning set forth in Section 8.5(c) hereof.

**“Business Day”** shall mean any day that is not a Saturday, Sunday, or NERC Holiday.

**“Buyer’s Taxes”** shall have the meaning set forth in Section 5.4(a) hereof.

**“Capacity”** shall mean on or as of any date of determination, the Facility’s capability to generate a specific amount of electrical energy at any point in time, including without limitation, all capacity from the Facility as determined by ISO-NE’s Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules that is obligated to deliver and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules, including without limitation as both a “New” and an “Existing” Capacity Resource as those terms are used in the ISO-NE Rules.

**“Capacity Clearing Price”** shall mean the market clearing price in the Forward Capacity Auction, or any successor auction or equivalent market if an auction is no longer utilized.

**“Capacity Commitment Period”** shall have the meaning set forth in the ISO-NE Rules.

**“Capacity Resource”** shall have the meaning set forth in the ISO-NE Rules.

**“Capacity Supply Obligations”** shall have the meaning set forth in the ISO-NE Rules.

**“Certificates”** shall mean an electronic certificate created pursuant to the Operating Rules of the GIS to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

**“Claiming Party”** shall have the meaning set forth in Section 10.1(a) hereof.

**“Claims”** shall have the meaning set forth in Section 13.1 hereof.

**“Commercial Operation”** shall mean the satisfaction of the conditions set forth in Section 3.3(b), as set out in a written notice from Seller to Buyer.

**“Commercial Operation Date”** shall mean the deadline for the Facility to achieve Commercial Operation, which shall be December 31, 2012, as that date may be extended pursuant to Section 3.1(b).

**“Contract Year”** shall mean: (i) for the first Contract Year, the period beginning with Commercial Operation and including and ending on the last day of the month that is twelve (12) full calendar months following Commercial Operation, (ii) for the second Contract Year, the one-year period beginning on the first day following the end of the first Contract Year, and (iii) for each subsequent Contract Year, the one-year period beginning on each subsequent anniversary of the beginning of the second Contract Year; provided, however, that (i) if Seller elects to extend the Services Term pursuant to Section 4.4(b), or (ii) if either Party elects to extend the Services Term pursuant to Section 10.3, then the end of the Contract Year in which the Party making that election notifies the other Party in writing of its extension election and the beginning and end of each subsequent Contract Year shall be delayed by the period of that extension. All delays in the start and end of Contract Years shall be cumulative (i.e., shall also take

into account all prior delays), and notwithstanding any provision of this Agreement to the contrary, in no event will there be more than twenty (20) Contract Years during the Term.

**“Credit Support”** shall mean collateral in the form of (a) cash or (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the recipient Party, as further described in Section 6.

**“Day Ahead Energy Market”** shall have the meaning set forth in the ISO-NE Rules.

**“Deepwater Transmission”** shall mean Deepwater Wind Block Island Transmission, LLC, a Delaware limited liability company, and its successors and permitted assigns.

**“Defaulting Party”** shall mean the Party with respect to which an Event of Default has occurred.

**“Deliver”** or **“Delivery”** shall mean with respect to Energy, to supply Energy in accordance with the terms of this Agreement at the Delivery Point.

**“Delivery Point”** shall mean the low voltage side of an electric substation on Block Island that is mutually acceptable to Buyer and Seller.

**“Development Period Security”** shall have the meaning set forth in Section 6.1(a) hereof.

**“Effective Date”** shall have the meaning set forth in Section 2.1 hereof.

**“Employees”** shall have the meaning set forth in Section 12.2 hereof.

**“Energy”** shall mean all electric energy produced by the Facility.

**“Environmental Attributes”** shall mean any and all generation attributes under the PUC’s regulations and or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental characteristics of the Facility or Energy produced by the Facility, during the Services Term (subject to Section 4.1(b)) including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy Delivered to Buyer; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy Delivered to Buyer; provided, however, that Environmental Attributes shall not include: (i) any state or federal production tax credits; (ii) any state or federal investment tax credits or other tax credits associated with the construction or ownership of the Facility; (iii) any state or federal tax credit introduced after the date of this Agreement intended to supplement, replace or enhance the tax credits described in the foregoing clauses (i) or (ii); (iv) any depreciation deductions permitted under the Internal Revenue Code with respect to the Facility (including any bonus or accelerated depreciation); or (v) any state, federal or private Financing, grants, guarantees or other credit support relating to the development, construction, ownership, operation or maintenance of the Facility.

**“Escalation Date”** shall have the meaning set forth in Section 5.1(b) hereof.

**“Event of Default”** shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 hereof and Section 9.2 hereof.

**“Extended Group”** shall have the meaning set forth in Section 15 hereof.

**“FERC”** shall mean the United States Federal Energy Regulatory Commission, and shall include its successors.

**“Financing”** shall mean indebtedness, whether secured or unsecured, loans, guarantees, notes, equity, convertible debt, sale-leaseback transactions, bond issuances, recapitalizations and all similar financing or refinancing.

**“Force Majeure”** shall have the meaning set forth in Section 10.1(a) hereof.

**“Forward Capacity Auction”** shall have the meaning set forth in the ISO-NE Rules.

**“Forward Capacity Market”** shall have the meaning set forth in the ISO-NE Rules.

**“GIS”** shall mean the New England Power Pool Generation Information System or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity generated or consumed within New England.

**“Good Utility Practice”** shall mean compliance with all applicable laws, codes and regulations, all applicable ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry for similarly situated facilities during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the industry in New England.

**“Governmental Entity”** shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility, but does not include a RTO.

**“Indemnifying Party”** shall have the meaning set forth in Section 13.1 hereof.

**“Indemnified Party”** shall have the meaning set forth in Section 13.1 hereof.

**“Interconnecting Transmission Provider”** shall mean Buyer and/or an Affiliate of Buyer, together with their successors and assigns under the Interconnection Agreement.

**“Interconnection Agreement”** shall mean an agreement among some or all of Seller, Buyer, the Interconnecting Transmission Provider and the ISO regarding interconnection of the Facility to the transmission system of the Interconnecting Transmission Provider or its affiliate, which Agreement shall be acceptable in form, scope and substance to each of the parties thereto in their sole discretion.

**“Investors”** shall have the meaning set forth in Section 12.2 hereof.

**“ISO”** or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

**“ISO-NE Practices”** shall mean the ISO-NE practices and procedures for delivery and transmission of energy and capacity and capacity testing in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

**“ISO-NE Rules”** shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

**“ISO-NE Tariff”** shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

**“ISO Settlement Market System”** shall have the meaning set forth in the ISO-NE Tariff.

**“kW”** shall mean a kilowatt.

**“Late Payment Rate”** shall have the meaning set forth in Section 5.3 hereof.

**“Law”** shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

**“Lender”** shall mean any Person, whether acting for its own account or as agent for another Person, providing Financing in connection with the development, construction, and ownership of the Facility (or any refinancing of that Financing), and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a Person.

**“Market Participant”** shall have the meaning set forth in the ISO-NE Rules.

**“Meters”** shall have the meaning set forth in Section 4.7(a) hereof.

**“Moody’s”** shall mean Moody’s Investors Service, Inc., and any successor thereto.

**“MW”** shall mean a megawatt.

**“MWh”** shall mean a megawatt-hour (one MWh shall equal 1,000 kWh).

**“NEPOOL”** shall mean the New England Power Pool and any successor organization.

**“NEPOOL Agreement”** shall mean the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005, as amended and/or restated from time to time.

**“NERC”** shall mean the North American Electric Reliability Council and shall include any successor thereto.

**“NERC Holiday”** shall mean New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and any other day declared a holiday by NERC.

**“Network Upgrades”** shall mean upgrades to the Pool Transmission Facilities and the Interconnecting Transmission Provider’s and Buyer’s transmission and distribution systems necessary for Delivery of the Energy at the Delivery Point, including those that are necessary for the Facility’s Capacity to be recognized as a “Capacity Resource” pursuant to the ISO-NE Rules, as determined and identified in the Interconnection Agreement.

**“Newly Developed Renewable Energy Resource”** shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an eligible renewable energy resource (as defined under R.I.G.L. § 39-26-5), and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit prior to the Agreement Date or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

**“Non-Claiming Party”** shall have the meaning set forth in Section 10.1(c) hereof.

**“Non-Defaulting Party”** shall mean the Party with respect to which a Default or Event of Default has not occurred.

**“Operational Limitations”** of the Facility are the parameters reasonably required to operate the Facility in accordance with manufacturers’ warranties, insurance requirements, the requirements of any Financing, and Good Utility Practice, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limit(s) for the Facility, including those in Exhibit A and those additional parameters to be provided by Seller prior to Commercial Operation and to be attached hereto as a supplement to Exhibit A.

**“Operating Period Security”** shall have the meaning set forth in Section 6.1(b) hereof.

**“Party”** and **“Parties”** shall have the meaning set forth in the first paragraph of this Agreement.

**“Permits”** shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

**“Person”** shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

**“Permitted Liens”** shall mean any claim, lien, charge, encumbrance, or demand on any REC by any Person into whose GIS account Buyer has designated delivery of each REC or Certificate.

**“Pool Transmission Facilities”** has the meaning given that term in the ISO-NE Rules.

**“PPA Regulatory Approval”** shall mean the PUC’s approval of this Agreement without material modification or conditions pursuant to R.I.G.L. § 39-26.1-7, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to 2.75 percent (2.75%) of Buyer’s actual annual payments under this Agreement, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

**“Price”** shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set out in Exhibit E.

**“Products”** shall mean Energy, Capacity and RECs.

**“PUC”** shall mean the Rhode Island Public Utilities Commission or any successor state regulatory agency.

**“Qualified Bank”** shall mean a major U.S. commercial bank or the U.S. branch office of a major foreign bank, in either case, having (x) assets on its most recent audited balance sheet of at least \$10,000,000 and (y) a rating for its senior long-term unsecured debt obligations of at least (A) “A” by S&P and “A2” by Moody’s, if such entity is rated by both S&P and Moody’s or (B) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s but not both.

**“Real-Time Energy Market”** shall have the meaning set forth in the ISO-NE Rules.

**“Rejected Purchase”** shall have the meaning set forth in Section 4.5 hereof.

**“Renewable Energy Certificates”** or **“RECs”** shall mean all of the Certificates and other Environmental Attributes associated with the Energy Delivered under this Agreement, including those that conform with the eligibility criteria set forth in the applicable Rhode Island regulations and are eligible to satisfy the Renewable Energy Standard, and shall include title to and claim over all Environmental Attributes associated with the Energy Delivered to Buyer under this Agreement.

**“Renewable Energy Standard”** shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. that requires all retail electricity sellers in Rhode Island (except Block Island Power Company and Pascoag Utility District) to provide a minimum percentage of electricity from eligible renewable energy resources, and such successor laws and regulations as may be in effect from time to time.

**“Representatives”** shall have the meaning set forth in Section 12.2 hereof.

**“Resale Damages”** shall mean, with respect to any Rejected Purchase, an amount equal to the sum of (a) the positive amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1 hereof and Exhibit E hereto for such Rejected Purchase of any Products, had such Products been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase of Energy and RECs, plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products. In the event that Seller is unable to resell a Rejected

Purchase using commercially reasonable efforts, the ISO-NE market value of the Products at the time of the Rejected Purchase (as reasonably determined by Seller) will replace the Resale Price in the calculation of the Resale Damages. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

**“Resale Price”** shall mean the sum of (a) the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase of Energy and RECs, plus (b) the Capacity Clearing Price for a Rejected Purchase of Capacity, plus (c) transaction and other administrative costs reasonably incurred by Seller in re-selling such Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer’s liability for such Rejected Purchase.

**“Restricted Persons”** shall have the meaning set forth in Section 12.2 hereof.

**“RTO”** shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to the FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

**“S&P”** shall mean Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor thereto.

**“Schedule or Scheduling”** shall mean the actions of Seller or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be Delivered on any given day or days (or in any given hour or hours) during the Services Term.

**“Seller’s Taxes”** shall have the meaning set forth in Section 5.4(a) hereof.

**“Services Term”** shall have the meaning set forth in Section 2.2(b) hereof.

**“Supply Forecast”** shall have the meaning set forth in Section 9.3(b).

**“Term”** shall have the meaning set forth in Section 2.2 hereof.

**“Termination Payment”** shall have the meaning set forth in Section 9.3(b) hereof.

**“Test REC Price”** shall mean, during the period prior to Commercial Operation, the average of two (2) broker quotes for the average sale price of renewable energy certificates in ISO-NE obtained by Seller from brokers that normally trade in such renewable energy certificates, having at least one (1) year of experience in trading renewable energy certificates and that are not Affiliates of either Party, in each case for the month in which the RECs at issue were delivered to Buyer.

**“Transmission Cable”** shall mean the bidirectional transmission cable to be constructed by Deepwater Transmission and running between the Delivery Point and a point on the mainland of Rhode Island that is mutually acceptable to Buyer and Deepwater Transmission.

**“Transmission Cable Condition Date”** shall have the meaning set forth in Section 8.5(a) hereof.

**“Transmission Cable Conditions”** shall mean collectively (a) the negotiation, execution and delivery by Buyer and Deepwater Transmission of the Transmission Cable Purchase Agreement, (b) the negotiation, execution and delivery of the Interconnection Agreement by the parties thereto, (c) the finalization and, to the extent appropriate, execution and delivery, of the Transmission Cable Cost Arrangement, and (d) the receipt of the Transmission Cable Regulatory Approvals.

**“Transmission Cable Cost Arrangement”** shall mean the documentation selected by Buyer and/or the Interconnecting Transmission Provider to determine the means of collecting the cost of purchasing the Transmission Cable pursuant to the Transmission Cable Purchase Agreement (including any return on investment on that cost) and the allocation of those costs among the relevant parties, which documentation shall be acceptable to Buyer in its sole discretion.

**“Transmission Cable Purchase Agreement”** shall mean the agreement between Deepwater Transmission and Buyer pursuant to which Deepwater Transmission will construct the Transmission Cable and, subject to the satisfaction of the terms and conditions set forth therein, Buyer will purchase the Transmission Cable, which agreement will be acceptable in form, scope and substance to each of Buyer and Deepwater Transmission in their sole discretion.

**“Transmission Cable Outage”** shall mean any full or partial outage or curtailment of the Transmission Cable occurring for any reason.

**“Transmission Cable Regulatory Approvals”** shall mean collectively (a) the approval of the Transmission Cable Purchase Agreement by the PUC pursuant to R.I.G.L. § 39-26.1-7, including to the extent applicable the recovery by Buyer of its costs incurred under the Transmission Cable Purchase Agreement, (b) the approval of the Transmission Cable Cost Arrangement by the FERC pursuant to Section 205 of the Federal Power Act, (c) to the extent applicable, the approval of the Transmission Cable Purchase Agreement by the FERC pursuant to Section 203 of the Federal Power Act, (d) to the extent applicable, the approval by the FERC of the Interconnection Agreement by the FERC pursuant to Section 205 of the Federal Power Act, and (e) any other filing or registration with or approval or consent of any Governmental Entity that may be required or determined by Buyer to be desirable in connection with the Interconnection Agreement, the Transmission Cable, the Transmission Cable Purchase Agreement and the Transmission Cable Cost Arrangement, each of which filings, registrations, consents and approvals shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion; provided that Buyer may waive the need for any specific item of the Transmission Cable Regulatory Approvals in its sole discretion.

**“Transmission Provider”** shall mean: (a) ISO-NE, its respective successor or Affiliates; (b) Buyer or an Affiliate of Buyer; (c) the Interconnecting Transmission Provider; or (d) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

## **2. EFFECTIVE DATE; CONDITIONS; TERM**

2.1 **Effective Date.** The **“Effective Date”** shall be the date that the condition described in Section 8.1 hereof has been satisfied or waived by Buyer (unless this Agreement is terminated prior to that date in accordance with its terms).

## 2.2 Term.

(a) The “**Term**” of this Agreement is the period beginning on the Agreement Date and ending upon the final settlement of all obligations hereunder after the expiration of the Services Term or the earlier termination of this Agreement in accordance with its terms.

(b) The “**Services Term**” is the period during which Buyer is obligated to purchase Products provided to Buyer by Seller commencing on Commercial Operation and continuing for a period of twenty (20) years from Commercial Operation, unless this Agreement is extended or earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

2.3 No Precedential Value. The Parties acknowledge that the Facility and their obligations with respect thereto are unique and that the form, terms and conditions of this Agreement are specific to this transaction and shall not be used as a precedent in any in future power purchase negotiations by Buyer with Seller, any Affiliate of Seller or any other Person.

## 3. **FACILITY DEVELOPMENT AND OPERATION**

### 3.1 Anticipated Commercial Operation; Extension.

(a) Seller anticipates that a notice to proceed for the construction of the Facility will be issued by Seller with respect to the Facility on or about April 30, 2012 and that Commercial Operation of the Facility will commence on or before the Commercial Operation Date.

(b) Seller has a one-time right to extend the Commercial Operation Date for a period of up to five (5) years by providing at least sixty (60) days’ written notice to Buyer of Seller’s exercise of its right to extend. Seller’s right to extend the Commercial Operation Date under this Section 3.1(b) is in addition to all permitted extensions of the Commercial Operation Date due to Force Majeure pursuant to Section 10.3. Any extension of the Commercial Operation Date under this Section 3.1(b) will result in an adjustment of the Escalation Date as set forth in Section 5.1(b).

(c) If the Facility does not achieve Commercial Operation by the Commercial Operation Date, either Party may terminate this Agreement within sixty (60) days after the Commercial Operation Date by written notice to the other Party (which termination shall be effective upon delivery of such notice), and upon such termination neither Party will have any further liability to the other hereunder except for obligations arising under Section 6.1, Section 12 and Section 13.

3.2 Progress Reports. At the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report addressing the status of the issuance of the notice to proceed and achieving Commercial Operation, in accordance with the

form attached hereto as Exhibit C. Seller shall permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

### 3.3 Commercial Operation.

(a) Seller's obligation to deliver the Products and, subject to Section 4.1(b), Buyer's obligation to accept and pay Seller for such Products commences on Commercial Operation.

(b) Commercial Operation shall occur on the date that Seller has satisfied, or Buyer has waived, the following conditions:

(i) Seller has notified Buyer in writing that (x) the Facility is substantially completed, as reasonably determined by Seller, (y) the Facility is capable of regular commercial operation in accordance with the Operational Limitations and Good Utility Practice, and (z) all conditions to Commercial Operation set forth in clauses (ii) through (xi) of this Section 3.3(b) have been satisfied or waived;

(ii) Seller has obtained all material Permits required for the lawful construction, ownership and operation of the Facility and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, which, to Seller's knowledge as of the Agreement Date, based on applicable Law in effect as of the Agreement Date, are fully described on Exhibit B;

(iii) Seller has (i) qualified the Facility as an "eligible renewable energy resource" pursuant to Section 5.0 of the Code of Rhode Island Rules 90-060-015 and (ii) otherwise satisfied the requirements for the Facility to be a Newly Developed Renewable Energy Resource;

(iv) Seller has acquired all real property rights and other site control rights needed to construct, own and operate the Facility and to perform Seller's obligations under this Agreement, consistent with Good Utility Practice;

(v) Seller has: (i) become a Market Participant in ISO-NE; or (ii) entered into an agreement with a Market Participant that will perform all of Seller's ISO-NE-related obligations in connection with the Facility and this Agreement, and has established all accounts and entered into all agreements with ISO-NE required for the performance of Seller's obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;

(vi) Seller has provided to Buyer I.3.9 confirmation from ISO-NE regarding approval of generation entry, if applicable, and Seller or its designated agent has submitted the Asset Registration Form (as defined in ISO-NE Practices) for the Facility to ISO-NE and has taken such other actions as are necessary to effect the transfer of the Energy to Buyer in the ISO Settlement Market System;

(vii) Seller has successfully completed all pre-operational testing and commissioning of the Facility in accordance with manufacturer guidelines, as evidenced by commissioning certificates issued by the manufacturer of the Facility's wind turbine generators;

(viii) All interconnection facilities and Network Upgrades required under the Interconnection Agreement have been completed (including the issuance of any applicable permits and the making of any regulatory filings required in connection therewith, and any real property rights and other site control rights required to construct such Network Upgrades), including final acceptance and authorization to interconnect the Facility from ISO-NE and the Interconnecting Transmission Provider;

(ix) The Transmission Cable has been completed and placed in service and is operable, with all Permits and real property rights and other site control rights needed to own and operate the Transmission Cable being held by the owner of the Transmission Cable;

(x) no Event of Default by Seller shall have occurred and remain uncured; and

(xi) Seller has obtained all necessary authorizations from FERC to sell Capacity and Energy at market-based rates and shall be in compliance with such authorization or shall be exempt from rate regulation under Sections 205 and 206 of the Federal Power Act, as amended.

#### 3.4 Operation of the Facility.

(a) Compliance With Law and Utility Requirements. Seller shall construct, maintain and operate the Facility, in all material respects, in accordance with: (i) Good Utility Practice; (ii) all requirements of Law; (iii) the Operational Limitations; and (iv) all rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, FERC and any other Governmental Entity, Transmission Provider (but, to the extent not expressly contemplated by this Agreement, only to the extent such Transmission Provider is expressly authorized by Law to do so), NERC and any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards, whether such requirements were imposed prior to or after the Effective Date, in each case that are applicable to the construction, operation and maintenance of the Facility and the performance by Seller of its obligations under this Agreement. If required, Seller shall be solely responsible for registering as the “Generator Owner” or “Generator Operator” of the Facility with NERC and any applicable regional reliability entities.

(b) Permits. During the Services Term, Seller shall maintain in full force and effect all material Permits necessary for it to perform its obligations under this Agreement, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall provide Buyer with a copy of the Operational Limitations prior to Commercial Operation, and the Operational Limitations will be incorporated into this Agreement as a supplement to Exhibit A. Seller is not required to operate the Facility in any manner inconsistent with the Operational Limitations, equipment specifications and operating guidelines and Seller’s safety practices.

(d) Physical Interconnection. Seller shall, during the Services Term, maintain a physical interconnection with the Delivery Point.

(e) ISO-NE Status. Seller shall, at all times during the Services Term: (i) be a Market Participant in ISO-NE; or (ii) have entered into an agreement with a Market Participant that will perform all of Seller’s ISO-NE-related obligations in connection with the Facility and this Agreement.

(f) Market-Based Rate Authority. During the Services Term, Seller shall maintain all necessary authorization from FERC to sell Capacity and Energy at market-based rates or shall be exempt from rate regulation under Sections 205 and 206 of the Federal Power Act, as amended.

(g) Eligible Renewable Energy Resource. Seller shall be solely responsible for certifying the Facility with the PUC as a renewable energy resource pursuant to Section 6.0 of the Code of Rhode Island Rules 90-060-015 (as amended from time to time) and maintaining such certification throughout the Services Term.

(h) Compliance Reporting. If Buyer is subject to any certification or compliance reporting requirement with respect to the RECs delivered to Buyer hereunder, then Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Prior to the commencement of construction of the Facility and throughout the remainder of the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit D. Prior to the start of each Contract Year, Seller shall provide Buyer with a certificate of insurance evidencing the insurance coverage required in Exhibit D. Such certificates shall (i) include Buyer as an additional insured on each policy, (ii) provide that Buyer receive thirty (30) days prior written notice of coverage modifications, and (iii) be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall state that the policy is "claims made."

#### **4. DELIVERY OF ENERGY, CAPACITY AND RECS**

##### **4.1 Obligation to Sell and Purchase Products**

(a) Beginning on Commercial Operation, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of this Agreement.

(b) Prior to Commercial Operation and so long as the Transmission Cable is in service, Seller may, but shall not be obligated to, sell and deliver, and Buyer shall purchase and receive, all but not less than all of the Products generated by the Facility. If Seller delivers Products to Buyer prior to Commercial Operation, then Buyer shall pay to Seller the Real Time Locational Marginal Price at the Delivery Point (as determined by ISO-NE) at the time of delivery for Energy and Capacity and the Test REC Price for RECs at the time of delivery.

(c) Except for Rejected Purchases and Products generated by the Facility prior to Commercial Operation, Seller shall dedicate the Energy, Capacity and RECs exclusively to Buyer, and Seller shall not (i) sell, divert, grant, transfer or assign such Energy, Capacity and RECs to any Person other than Buyer or (ii) enter into any agreement or arrangement under which any Energy, Capacity and RECs dedicated to Buyer under this Agreement can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to use, resell or convey the Energy, Capacity and RECs purchased by Buyer under this Agreement in its sole discretion.

#### 4.2 Scheduling and Delivery.

(a) During the Services Term, Seller or its designated representative shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as applicable, in such a manner that Buyer may resell such Energy in the Day Ahead Energy Market or Real Time Energy Market, as applicable.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Seller shall be solely responsible for any obligations and liabilities, including all charges, penalties and financial assurance obligations, imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, except to the extent imposed as a result of Buyer actions or failure to act.

4.3 Sales for Resale. All Energy, Capacity and RECs delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy, Capacity and RECs. Buyer shall provide Seller with any certificates reasonably requested by Seller to evidence that the deliveries of Energy, Capacity and RECs hereunder are sales for resale. Nothing in this Agreement shall be construed to prohibit or restrict such resale of such Energy, Capacity and RECs by Buyer.

#### 4.4 Transmission Cable Outage.

(a) Notwithstanding any other provision of this Agreement to the contrary, Buyer shall have no obligation to accept or pay for any Products generated at any time during a Transmission Cable Outage.

(b) For any Transmission Cable Outage that occurs during the Services Term, lasts longer than fourteen (14) days and is not related to ordinary scheduled maintenance of the Transmission Cable or associated lines or substation equipment, Seller may elect to extend the Services Term day for day by the period of that Transmission Cable Outage; provided, however, that all such extensions of the Services Term elected by Seller under this Section 4.4(b), together with all extensions of the Services Term elected by Seller for Force Majeures under Section 10.3, shall not exceed thirty six (36) months in the aggregate. Any election to extend the Services Term under this Section 4.4(b) must be made in writing prior to the end of the Transmission Cable Outage giving rise to that extension. Any extension of the Services Term under this Section 4.4(b) will result in an adjustment of the Escalation Date as set forth in Section 5.1(b) and of the beginning and end of the remaining Contract Years as set forth in Section 1.

4.5 Failure by Buyer to Accept Delivery of Energy, Capacity or RECs. If Buyer fails to accept all or part of any of the Products to be purchased by Buyer hereunder and such failure to accept is not excused under the terms of this Agreement (a "**Rejected Purchase**"), then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an

amount for such Rejected Purchase equal to the Resale Damages. Each Party agrees and acknowledges that (i) the damages that Seller would incur due to a Rejected Purchase would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Resale Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages. Seller may deliver and sell all Rejected Purchases to any Person.

#### 4.6 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering Energy to the Delivery Point consistent with all applicable standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff. Subject to the provisions of Section 4.4, Buyer shall be responsible for the costs of delivering Energy from the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and any other applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy Delivered under this Agreement to the Delivery Point. Subject to the provisions of Section 4.4, Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy Delivered under this Agreement from and after the Delivery Point.

(c) Title to and risk of loss related to the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to the RECs shall transfer to Buyer when the same are credited to Buyer's GIS account(s) or the GIS account(s) designated by Buyer to Seller in writing.

#### 4.7 Metering.

(a) Metering. All electric metering required in connection with the sale of the Products, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the "**Meters**"), shall be installed, operated, maintained and tested at Seller's expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Transmission Provider in whose territory the Delivery Point is located and ISO-NE; provided, however, Seller's obligation to replace the Meters or install additional or new Meters to comply with any future changes in metering requirements or standards shall be limited to ISO-NE requirements and standards generally applicable to all generators. The Meters shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Delivery Point by the Seller (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy Delivered to Buyer; provided however, that Seller, at the direction of Buyer and at Buyer's expense, shall cause the Meters to be tested by the Transmission Provider in whose territory the Delivery Point is

located no more than once each Contract Year, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), the measurement of Energy produced by the Facility shall be adjusted in accordance with the filed tariff of such Transmission Provider and Seller shall reimburse Buyer for the cost of such test of the Meters.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test, at its expense, any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters upon reasonable notice to Seller.

(e) Notice of Malfunction. Seller shall provide Buyer with timely notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than two percent (2.0%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The Meters shall be capable of sending meter telemetry data, and Seller shall provide Buyer with access to such data.

4.8 Provision of Data. To the extent reasonably requested by Buyer in writing, Seller shall promptly provide to Buyer, in writing, information regarding the performance of the Facility, including any scheduled outages and any forecasts of Energy; provided, that such information shall be deemed, unless indicated otherwise, to be Confidential Information.

4.9 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to the RECs (including the Environmental Attributes) during the Services Term in accordance with the terms of this Section 4.9.

(b) Seller shall maintain in effect throughout the Services Term a statement of qualification from the PUC that all Energy meets the requirements for eligibility pursuant to the Renewable Energy Standard.

(c) At Buyer's request, Seller shall seek qualification of the Energy under the renewable energy standard or similar law of New York or one or more New England states (in addition to Rhode Island) or any federal renewable energy standard and shall maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary. Seller shall be responsible for the cost of seeking and maintaining such qualification in Rhode Island, Massachusetts and New Hampshire, and Buyer shall be responsible for the cost of seeking and maintaining such qualification in any other jurisdiction. As reasonably requested by Buyer, Seller shall also submit to Buyer any information required by Rhode Island, Massachusetts and New Hampshire

(including without limitation the PUC and the analogous Governmental Entities in Massachusetts and New Hampshire) with regard to the administration of that state's rules regarding its Renewable Energy Standard or any renewable energy standard in Massachusetts and New Hampshire. As reasonably requested by Buyer and at Buyer's expense, Seller shall also submit to Buyer any information required by any other state or federal agency with regard to administration of its rules regarding its renewable energy standard.

(d) Seller shall comply in all material respects with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement. In addition, at Buyer's request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which registration and compliance will be at Seller's sole cost if such registration and compliance is requested with respect to Rhode Island's, New Hampshire's or Massachusetts' rules and requirements regarding Environmental Attributes and will be at Buyer's sole cost in all other jurisdictions.

(e) Prior to the Delivery of any Energy hereunder: (i) Seller shall cause Buyer to be registered as the initial owner of all Certificates associated with the RECs; or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates associated with the RECs to be delivered hereunder to Buyer. In the event any Certificates associated with the RECs to be delivered to Buyer under this Agreement are not actually deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing) on the date such Certificates are created in the GIS, Buyer shall notify Seller accordingly in writing and Seller shall, within ten (10) business days of receipt of such notice, credit Buyer with the value of the RECs associated with those Certificates, calculated in accordance with Section 2 of Exhibit E. Notwithstanding the foregoing or any other provision of this Agreement (including without limitation Exhibit E) to the contrary, Buyer shall withhold from any payment due to Seller under Section 5.2 after either (x) the date that is seven (7) months prior to the end of the Services Term or (y) the date on which Buyer has exercised a right to terminate this Agreement prior to the expiration of the Services Term an amount equal to the value of the RECs (calculated in accordance with Section 2 of Exhibit E) that would otherwise be included in that payment, and such withheld amount shall be paid to Seller within fifteen (15) days after the Certificates associated with those RECs have been deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing).

#### 4.10 Capacity.

(a) Buyer's purchase of Capacity under this Agreement shall be solely through financial settlement involving the payment of the Price and adjustment for the Capacity Clearing Price as set forth in Exhibit E. Buyer shall neither take title to any Capacity nor be responsible for any actions or conditions in the Forward Capacity Market with respect to such Capacity. Seller may qualify and sell any Capacity in the Forward Capacity Market.

(b) Following Commercial Operation, Seller or its designated agent shall take all actions necessary to qualify the Facility for participation in future Forward Capacity Auctions (or reconfiguration auctions) as a Capacity Resource (provided, however, that the failure of ISO-NE to accept the qualification shall not be an Event of Default hereunder, but the Price shall be adjusted as described in Part 3 of Exhibit E regardless of whether ISO-NE accepts that qualification).

4.11 Title to Products. Seller will have good and marketable title to all Products sold and delivered to Buyer under this Agreement, free and clear of all liens, charges and encumbrances other than Permitted Liens.

## 5. PRICE AND PAYMENTS FOR PRODUCTS

### 5.1 Price for Products.

(a) Price. Buyer shall pay to Seller, in immediately available funds, the Price set forth in Exhibit E for all Products delivered to Buyer in accordance with this Agreement, as adjusted by the Wind Outperformance Adjustment Credit described therein. Other than (i) the payments set forth in Exhibit E, (ii) payments for Products sold to Buyer prior to Commercial Operation under Section 4.1(b), (iii) expenses associated with the inspection and testing of the Meters under Section 4.7, (iv) expenses associated with qualification of the Energy under the renewable energy standard of any jurisdiction other than Rhode Island, Massachusetts and New Hampshire under Section 4.9, (v) late payment charges described in Section 5.3, (vi) Buyer's obligations under Section 5.4, (vii) release or reimbursement of any Security described in Article 6, (viii) Termination Payments due under Section 9.3, and (ix) any payment required with respect to Buyer's indemnification obligations under Section 13.1, Buyer shall not be required to make any other payments to Seller under this Agreement.

(b) Escalation of Price. Consistent with Appendix X of Exhibit E, the Price shall escalate by a factor of three and one-half percent (3.5%) on each Escalation Date. For purposes of this Agreement, the "**Escalation Date**" shall initially be January 1, 2013 and each January 1 thereafter; provided, however, that if Seller elects (i) to extend the Commercial Operation Date pursuant to Section 3.1(b), (ii) to extend the Services Term pursuant to Section 4.4(b), or (iii) to extend the Services Term pursuant to Section 10.3, then each Escalation Date occurring after Seller notifies Buyer in writing of its extension election shall be delayed by the period of that extension. All delays in the Escalation Date occurring under this Section 5.1(b) shall be cumulative (i.e., shall also take into account all prior extensions), such that the period of time between January 1 of a year and the Escalation Date corresponding to that year shall be equal to the total number of days of all extensions elected by Seller under Sections 3.1(b), 4.4(b) and 10.3 collectively. Notwithstanding any provision of this Agreement to the contrary, in no event will there be more than twenty (20) Escalation Dates during the Term. Upon the election of any extension of the Commercial Operation Date under Section 3.1(b) or the extension of the Services Term under Section 4.4(b) or Section 10.3, Seller shall deliver a certification in the form of Exhibit F setting forth the total number of days of such extension and establishing the new annual Escalation Date and (if the extension is elected under Section 4.4(b) or Section 10.3) the start date and end date for each remaining Contract Year, going forward from the date such certification is delivered. Buyer shall approve such certification in its sole discretion, and any dispute regarding such certification shall be resolved in accordance with Section 11.

### 5.2 Payment.

(a) Billing Period. The calendar month shall be the standard period for all payments under this Agreement. On or before the fifteenth (15th) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting

documentation and information as Buyer may request. If requested by Seller, Buyer shall make all payments due under this Agreement by electronic funds transfers to the account specified by Seller, and Seller shall provide to Buyer the necessary funds transfer instructions.

(b) Timeliness of Payment. All undisputed invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before fifteen (15) days from receipt of the applicable invoice. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under this Agreement shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from any recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements.

(ii) A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other solely under this Agreement on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party hereunder during the monthly billing period under this Agreement, including any interest, payments and credits, shall be netted so that only the excess amount remaining due shall be paid by the Party owing such excess. If no mutual debts or payment obligations exist under this Agreement, a Party shall pay any debt or obligation it owes in full when due. The Parties agree to provide each other with reasonable detail of any net payment or net payment request. The Parties shall not net any debts and payment obligations due under this Agreement against any debts and payment obligations not arising under this Agreement.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified in this Agreement at the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties) plus one percent (1%) (the “**Late Payment Rate**”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Services Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits or qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes. Except as set forth in Section 8.4, the obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits during the Services Term.

## 6. SECURITY FOR PERFORMANCE

6.1 Seller’s Support.

(a) Seller shall be required to post Credit Support of \$10 per kW of nameplate capacity to secure Seller’s obligations in the period between the Agreement Date and Commercial Operation (“**Development Period Security**”). The Development Period Security shall be provided to Buyer within fifteen (15) Business Days after the later to occur of (i) the Effective Date or (ii) the satisfaction of the Transmission Cable Conditions (or the waiver thereof by Buyer in its sole discretion). Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after: (i) the later to occur of (x) Buyer’s receipt of an undisputed notice from Seller that Commercial Operation has occurred or (y) Buyer’s receipt of the initial Operating Period Security; or (ii) termination of the Agreement prior to Commercial Operation.

(b) On or before the tenth (10th) day following the date on which Commercial Operation occurs, Seller shall provide Buyer with Credit Support to secure Seller’s obligations under this Agreement (“**Operating Period Security**”). The Operating Period Security shall be \$30 per installed kW of Capacity and shall be subject to replenishment from time to time, within five (5) Business Days after Buyer draws on the Operating Period Security, up to the amount required by this

Section 6.1(b), but in any event, not to exceed \$1,800,000 on an aggregate, cumulative basis, including all prior Credit Support provided as Operating Period Security. Buyer shall return any undrawn amount of the Operating Period Security to Seller within thirty (30) days after the expiration of the Services Term, or termination of the Agreement, but only after such Operating Period Security has been used to satisfy any outstanding obligations of Seller in existence at the time of such expiration or termination.

6.2 Cash Deposits. Any cash provided by Seller as Credit Support under this Agreement shall be held in an interest bearing deposit account held at a Qualified Bank selected by Buyer in its reasonable discretion. All interest accrued on that cash deposit will be retained in that account; provided, however, that to the extent the amount held in that account exceeds the required level of Development Period Security (before and on Commercial Operation) or the Operating Period Security (after Commercial Operation), such excess will be paid to Seller promptly after Seller requests such a payment in writing delivered to Buyer.

## 7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

7.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the Agreement Date as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Rhode Island. Subject to the receipt of the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

(b) Due Authorization; No Conflicts. The execution and delivery by Buyer of this Agreement, and the performance by Buyer of its obligations hereunder, have been duly authorized by all necessary actions on the part of Buyer and do not and, under existing facts and law, shall not: (i) contravene its certificate of incorporation or any other governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any material lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(c) Binding Agreement. This Agreement has been duly executed and delivered on behalf of Buyer and, assuming the due execution hereof and performance hereunder by Seller and receipt of the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(d) No Proceedings. Except to the extent relating to the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction

contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.

(e) Consents and Approvals. Except to the extent associated with the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer.

(g) Bankruptcy. There are no bankruptcy, insolvency, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

(h) No Event of Default. No Event of Default has occurred and is continuing and no Event of Default will occur as a result of the performance by Buyer of its obligations under this Agreement.

7.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Agreement Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, validly existing and in good standing under the laws of the State of Delaware. Subject to the receipt of the Permits listed in Exhibit B, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and law, will not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Permits listed on Exhibit B, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any material lien, charge or encumbrance upon any of its properties as a result of the occurrence of any of the foregoing contraventions, conflicts, or violations.

(d) Binding Agreement. This Agreement has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller and receipt of the Permits listed on Exhibit B, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) No Proceedings. Except to the extent associated with the Permits listed on Exhibit B, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Seller reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Seller's ability to perform its obligations under this Agreement.

(f) Consents and Approvals. Subject to the receipt of the Permits listed on Exhibit B, the execution, delivery and performance by Seller of its obligations under this Agreement do not and, under existing facts and law, shall not, require any material Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(g) Permitting. Seller has not received any formal notice from any Governmental Entity informing Seller that such Governmental Entity will not issue to Seller the Permit listed on Exhibit B for which it has jurisdiction.

(h) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller.

(i) Bankruptcy. There are no bankruptcy, insolvency, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(j) No Event of Default. No Event of Default has occurred and is continuing and no Event of Default will occur as a result of the performance by Seller of its obligations under this Agreement.

7.3 Update of Representations and Warranties. Buyer represents and warrants to Seller as of the Effective Date and Commercial Operation that the representations and warranties set forth in Sections 7.1(a), 7.1(b), 7.1(c), 7.1(e), 7.1(g) and 7.1(h) are true and accurate. Seller represents and warrants to Buyer as of Commercial Operation that the representations and warranties set forth in Sections 7.2(a), 7.2(b), 7.2(c), 7.2(d), 7.2(f), 7.2(i) and 7.1(j) are true and accurate.

7.4 Permits. Buyer acknowledges that the Permits listed on Exhibit B are all the Permits Seller is aware of, as of the Agreement Date, that are required to develop, construct and operate the Facility based on current development and financing plans and timelines, to the best of Seller's knowledge after due inquiry. Accordingly, all references to Exhibit B in this Agreement shall be read to include references to such other Permits as may be required from time to time with respect to the development, construction and operation of the Facility without further modification or amendment of this Agreement or Exhibit B.

## 8. EFFECTIVENESS OF AGREEMENT

8.1 Receipt of PPA Regulatory Approval. The effectiveness of this Agreement, other than the Parties' rights and obligations under Section 8.2, Section 8.3, Section 12 and Section 13, is conditioned upon and shall not become effective or binding until the receipt of the PPA Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the PPA Regulatory Approval.

8.2 Filing for PPA Regulatory Approval. Buyer has made a filing with the PUC with respect to the PPA Regulatory Approval on October 15, 2009, as supplemented by Buyer's filings with the PUC on November 18, 2009 and December 9, 2009. Seller has intervened in, and may participate in, the PPA Regulatory Approval proceeding.

8.3 Failure to Satisfy Conditions. If Buyer has not received the PPA Regulatory Approval on or before the date falling one year after Buyer has filed for the PPA Regulatory Approval, this Agreement shall terminate as of that date, with no further liability hereunder for either Party except for any obligations arising under Sections 6.1, 12 and 13.

8.4 Additional Seller Termination Conditions. Seller shall have the right, by written notice to Buyer, to terminate this Agreement without penalty if, (1) on or prior to December 31, 2010, the in-service deadline for the investment tax credit described in Section 48 of the Internal Revenue Code is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (2) on or prior to December 31, 2010, the in-service deadline for the renewable energy production tax credit described in Section 45 of the Internal Revenue Code is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (3) on or prior to December 31, 2010, the program for payments for specified renewable energy property in lieu of tax credits set forth in Section 1603 of the American Recovery and Reinvestment of 2009 is not extended with respect to facilities such as the Facility through December 31, 2015 or later; (4) Seller is unable to, or has determined, in its sole discretion, that it will not be able to, secure tax equity financing to monetize the value of federal tax credits and depreciation deductions on or prior to achieving Commercial Operation; or (5) Seller has not received, or has determined, in its sole discretion, that it will not receive, all the Permits listed on Exhibit B on a sufficiently timely basis to develop and construct the Facility in order to qualify for the federal tax incentives described in the foregoing clauses (1), (2) or (3) (as such may be extended from time to time).

### 8.5 Transmission Cable Conditions.

(a) In the event that either (x) the Transmission Cable Conditions are not satisfied on or before December 31, 2010 or (y) a Governmental Entity issues a Transmission Cable Regulatory Approval that is binding on Buyer but inconsistent, as determined in the sole discretion of either Party, with the terms and conditions agreed by the parties to the Transmission Cable Purchase Agreement, the Interconnection Agreement or the Transmission Cable Cost Arrangement (the earlier of the date such order or decision becomes final and non-appealable or December 31, 2010 is referred to as the "**Transmission Cable Condition Date**"), then, unless the Seller has notified Buyer in writing that it intends to exercise its rights under Section 8.5(b) hereof within fifteen (15) days of the Transmission Cable Condition Date, either Party may terminate this Agreement by giving written notice of such termination to the other Party not earlier than fifteen (15) days and not later than thirty (30) days after

the Transmission Cable Condition Date (which termination will be effective upon delivery of such notice), and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.1, Section 12 and Section 13.

(b) If Seller delivers the notice described in Section 8.5(a) above, then Seller shall deliver to Buyer by not later than sixty (60) days after the Transmission Cable Condition Date (i) a proposed amendment to Exhibit E reflecting Seller's proposed change in the Price needed to permit Seller to recover the amounts due to Deepwater Transmission for use of the Transmission Cable for the Term and (ii) its assessment as to whether the Interconnection Agreement must be amended or restated in order to address any change in conditions as a result of the failure to satisfy the Transmission Cable Conditions by the Transmission Cable Condition Date. Buyer and Seller shall negotiate in good faith for the sixty (60) day period following the delivery of such notice in an attempt to come to an agreement regarding revisions to Exhibit E and, if applicable, the Interconnection Agreement, it being understood that neither Seller nor Buyer shall have the obligation to come to any agreement.

(c) Following the end of the sixty (60) day good faith negotiating period described in Section 8.5(b), Buyer will use commercially reasonable efforts to file with the PUC any agreed amendment to Exhibit E or this Agreement, or, if no such agreement has been reached, the versions of Exhibit E and this Agreement that each Party would be willing to execute, with a request that the PUC issue its approval of the version proposed by Buyer pursuant to R.I.G.L. § 39-26.1-7, including the recovery by Buyer of its costs incurred under this Agreement as amended and remuneration equal to 2.75 percent (2.75%) of Buyer's actual annual payments under this Agreement, as amended by that proposed amendment, which approval shall be acceptable to Buyer in its sole discretion (the "**Amendment Regulatory Approval**"). If the Amendment Regulatory Approval is not issued and final and non-appealable by the date that is twelve (12) months after the date on which the application for the Amendment Regulatory Approval is filed with the PUC, then this Agreement shall terminate on such date, and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.1, Section 12 and Section 13.

(d) Following the end of the sixty (60) day good faith negotiating period described in Section 8.5(b), if the Parties agree that an amendment to or restatement of the Interconnection Agreement is required under this Section 8.5, the parties shall, if agreement has not been reached with respect to such amendment or restatement, continue to negotiate in good faith for an additional sixty (60) day period. Upon reaching agreement, if any, if any party thereto determines in its sole discretion that FERC approval of that amendment to or restatement of the Interconnection Agreement is needed, then such party shall promptly apply for such FERC approval. If (x) an agreement on such amendment or restatement is not reached after the additional sixty (60) day negotiating period or (y) FERC approval of such amendment or restatement is not received by the date that is twelve (12) months after the date the party seeking such FERC approval has filed for such approval with FERC, then, notwithstanding any other provision of this Section 8.5, this Agreement will terminate and neither Party will have any further liability or obligations hereunder except for obligations arising under Section 6.1, Section 12 and Section 13.

(e) Nothing set forth in this Agreement, including this Section 8.5, shall obligate Buyer or any Affiliate of Buyer to own, operate or otherwise participate in the Transmission Cable.

## 9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. The occurrence of any of the following shall each constitute an event of default ("**Event of Default**"), with respect to a Party if not cured within the corresponding cure periods set forth below:

(a) Representation or Warranty. Any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement, is false or misleading in any material respect as of the date made, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice of such breach to the Defaulting Party; provided, however, that such period shall be extended (x) for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period, provided that corrective action has been commenced by the Defaulting Party within such thirty (30) day period, and (y) for so long as such cure is diligently pursued by the Defaulting Party, until such Default had been corrected; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than five (5) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Other Covenants. Other than a Rejected Purchase (the sole remedy for which shall be the payment provided for under Section 4.5) or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(e), or 9.2, such Party fails to perform, observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended (x) for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period, provided that corrective action has been commenced by the Defaulting Party within such thirty (30) day period, and (y) for so long as such cure is diligently pursued by the Defaulting Party, until such Default had been corrected; or

(d) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of such Party or of a major part of such Party's property, which is not dismissed within sixty (60) days; or

(e) Permit Compliance. Such Party fails to maintain in full force and effect any material Permit (other than the PPA Regulatory Approval or the Transmission Regulatory Approvals) necessary for such Party to perform its obligations under this Agreement, including in the case of Seller any Permit necessary to construct, operate and maintain the Facility as and when such Permit is required, and such failure is not cured within ninety (90) days after the Non-Defaulting Party has provided written notice of such breach to the Defaulting Party; provided, however, that such period shall be extended (x) an additional reasonable period if the Defaulting Party is unable to cure within that

ninety (90) day period, provided that corrective action has been commenced by the Defaulting Party within such ninety (90) day period and (y) for so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected.

9.2 Events of Default by Seller. The following events shall each constitute an Event of Default of Seller if not cured within the corresponding cure periods set forth below:

(a) Delivery of Products to Third Party. Seller delivers any portion of any Product (other than Rejected Purchases), or any certificate or other entitlement to a Product, required to be delivered to Buyer under this Agreement to any Person other than Buyer and those deliveries continue for more than fifteen (15) days after Buyer has provided written notice of such breach to the Seller; or

(b) Taking of Facility Assets. Except pursuant to security arrangements between Seller and any Lender, any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of Seller's obligations hereunder is taken upon execution or by other process of law directed against Seller and Seller has not retaken possession of the asset within ninety (90) days after the Buyer has provided written notice of such breach to Seller and such taking adversely affects Seller's ability to Deliver Products to Buyer; or

(c) Failure to Maintain Credit Support. The failure of Seller to provide or maintain the Development Period Security or the Operating Period Security required pursuant to Article 6 of this Agreement, and such failure continues for more than thirty (30) days after Buyer has provided written notice thereof to Seller.

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement until such Event of Default has been cured, (ii) suspend its performance hereunder (it being understood that any Products for which Seller is permitted to suspend delivery under this Section 9.3 may be resold by Seller to any third party, and, notwithstanding anything to the contrary in this Agreement, such resale shall not constitute a breach of Seller's obligations hereunder and further, that such resale shall not limit Seller's right to Resale Damages under Section 4.5), and (iii) exercise such other remedies as provided for in this Agreement or at law, including, without limitation, the termination right set forth in Section 9.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, Buyer may not suspend or withhold payments due under this Agreement for Products delivered to Buyer in accordance with the terms of this Agreement during the continuance of any Event of Default and prior to termination.

(b) Termination and Termination Payment. Upon the occurrence of an Event of Default, the Non-Defaulting Party may terminate this Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If either Buyer or Seller terminates this Agreement under this Section 9.3(b), it shall be entitled to calculate and receive as its sole remedy for such Event of Default a "**Termination Payment**" as follows:

(i) *Termination by Seller Prior to Close of Construction Financing.* If Seller terminates this Agreement at any time prior to the close of construction Financing for the Facility due to an Event of Default of Buyer, Buyer shall reimburse Seller for all its out-of-pocket expenses in connection with the development and construction of the Facility.

(ii) *Termination by Seller On or After Construction Financing.* If Seller terminates this Agreement because of an Event of Default by Buyer occurring on or after the close of construction Financing for the Facility, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\frac{\sum[(CV - MV) + P]}{N}$$

where:

“ $\sum$ ” is the summation over the Services Term.  
N

“CV” is the contract value of the Products for the remainder of the Services Term calculated with reference to the applicable Price and the Supply Forecast.

“MV” is the market value of the Products for the remaining Services Term as determined with reference to the applicable Resale Price and the Supply Forecast.

“P” is the amount of any applicable penalties and administrative costs incurred by Seller in selling the Products not accepted and paid for by Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Seller in good faith and in a commercially reasonable manner, and Seller shall provide Buyer with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(ii), which calculation shall be binding upon Buyer, absent manifest error.

(iii) *Supply Forecast.* For purposes of determining the Termination Payment on or after the fourth Contract Year, pursuant to this Section 9.3, the quantity of Products projected to be delivered for the remainder of the Services Term shall be based upon actual quantities delivered under this Agreement during the immediately preceding Contract Year, to the extent the Facility was fully operable during that preceding Contract Year. For the purposes of determining the Termination Payment during the first three Contract Years, or in the event the Facility was not fully operable during any preceding Contract Year, the calculation shall be based on a good faith estimate of the quantity of such Products as if the Facility was fully operable (the “**Supply Forecast**”) for the remainder of the Services Term.

(iv) *Termination by Buyer Prior to Commercial Operation.* If Buyer terminates this Agreement prior to Commercial Operation (whether as a result of an Event of Default or otherwise), the Termination Payment due to Buyer shall be \$0.

(v) *Termination by Buyer After Commercial Operation.* If Buyer terminates this Agreement because of an Event of Default by Seller occurring on or after Commercial Operation, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\frac{\sum[(PV - CV) + P]}{N}$$

Where:

“PV” is the market value of the Products for the remaining Services Term as determined with reference to the forward curve for power prices in ISO-NE and the Supply Forecast.

(vi) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages that Seller, or Buyer, would incur due to an Event of Default by Buyer, or Seller, respectively would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(vii) *Payment of Termination Payment.* Buyer, or Seller, as applicable shall make any Termination Payment due hereunder within ten (10) Business Days after the notice of termination provided under this Section 9.3(b) is effective. If either Party disputes the other Party’s calculation of the Termination Payment, in whole or in part, the disputing Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the other Party a detailed written explanation of the basis for such dispute; provided, however, the Party owing the Termination Payment shall first transfer Credit Support to the other Party in an amount equal to the Termination Payment as calculated by the Party owed the Termination Payment. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT

DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## 10. FORCE MAJEURE

### 10.1 Force Majeure.

(a) The term “**Force Majeure**” means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence (the “**Claiming Party**”); (ii) that could not have been prevented or avoided by the Claiming Party through the exercise of reasonable diligence; and (iii) that limits, prohibits or prevents the Claiming Party from performing its obligations under this Agreement. Notwithstanding the foregoing, under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to the Claiming Party, (x) any occurrence or event that was caused by the Claiming Party, (y) Seller’s ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer’s ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to the Claiming Party’s lack of preparation, the Claiming Party’s failure to timely obtain and maintain all necessary Permits (excepting the PPA Regulatory Approval and the Transmission Cable Regulatory Approvals), failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure. Force Majeure shall also not include any Transmission Cable Outage, which, for purposes of this Agreement, is addressed exclusively in Section 4.4.

(b) Subject to the Claiming Party’s compliance with Section 10.2, if a Claiming Party is unable by Force Majeure to perform any of its obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. Such inability shall be promptly corrected by the Claiming Party to the extent it may be corrected through the exercise of all due diligence. Neither Party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, if a Force Majeure prevents full or partial performance by the Claiming Party under this Agreement for a period of thirty-six (36) months or more, the Party whose performance is not prevented by Force Majeure (the “**Non-Claiming Party**”) shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

(d) Without limiting the generality of the last sentence of Section 10.1(a), neither Party may raise a claim of Force Majeure based on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively

prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

#### 10.2 Procedure for Claiming and Resolving Force Majeure.

(a) The Claiming Party shall give written notice of any claimed Force Majeure to the Non-Claiming Party promptly upon the occurrence of such claimed Force Majeure and, in any event, within three (3) Business Days of such claimed Force Majeure. Such notice shall provide details regarding the nature, extent and expected duration of the claimed Force Majeure, the day and time when the claimed Force Majeure began, its anticipated effect on the ability of the Claiming Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such claimed Force Majeure, and shall be updated or supplemented to keep the Non-Claiming Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure.

(b) The Non-Claiming Party shall, within three (3) Business Days of its receipt of the notice described in Section 10.2(a), either acknowledge or dispute the occurrence of the claimed Force Majeure in writing. Any failure to respond to a notice under Section 10.2(a) within three (3) Business Days shall be deemed to be acknowledgement of the Force Majeure by the Non-Claiming Party. If the Non-Claiming Party disputes the occurrence of the Force Majeure, that dispute shall be resolved in accordance with the dispute resolution provisions in Section 11.

(c) The Claiming Party shall notify the Non-Claiming Party in writing of the resolution of any Force Majeure promptly and in any event within three (3) Business Days after such resolution. Such notice shall include details regarding the nature of the resolution of the Force Majeure, the date on which the Force Majeure was resolved and a commitment by the Claiming Party to recommence the performance in full of its obligations under this Agreement effective as of the date the Force Majeure was resolved, as set forth in such notice. The Non-Claiming Party shall, within three (3) Business Days of its receipt of that notice, either acknowledge or dispute the resolution of the Force Majeure in writing. Any failure to respond to a notice under this Section 10.2(c) within three (3) Business Days shall be deemed to be acknowledgement of the resolution of the Force Majeure by the Non-Claiming Party. If the Non-Claiming Party disputes the resolution of the Force Majeure, that dispute shall be resolved in accordance with the dispute resolution provisions in Section 11.

10.3 Extension of Agreement; Effect on Price. For any Force Majeure that occurs during the Services Term and lasts longer than sixty (60) days, the Claiming Party may elect to extend the Services Term day for day by the period of that Force Majeure; provided, however, that all such extensions of the Services Term elected by Seller under this Section 10.3, together with all extensions of the Services Term elected by Seller for Transmission Cable Outages under Section 4.4(b), shall not exceed thirty six (36) months in the aggregate. Any election to extend the Services Term under this Section 10.3 must be made in writing prior to the end of the Force Majeure giving rise to that extension. Any extension of the Services Term under this Section 10.3 will result in an adjustment of the Escalation Date as set forth in Section 5.1(b) and the beginning and end of the remaining Contract Years as set forth in Section 1. If Buyer elects to extend the Services Term under this Section 10.3, Buyer shall deliver a certification in the form of Exhibit F (revised to reflect the fact that Buyer has exercised the extension election) setting forth the total number of days of such extension and establishing the new annual Escalation Date and the start date and end date for each remaining Contract Year, going forward from the date such certification

is delivered. In such event, Seller shall approve such certification in its sole discretion, and any dispute regarding such certification shall be resolved in accordance with Section 11.

## 11. DISPUTE RESOLUTION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a “**Dispute**”), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the State of Rhode Island. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement.

## 12. CONFIDENTIALITY

12.1 Nondisclosure. Buyer and Seller each agree not to disclose to any Person and to keep confidential, and to cause each of its respective Affiliates, and its and their respective officers, directors, employees, partners and representatives not to disclose to any Person and to keep confidential, any non-public information relating to the terms and provisions of this Agreement that (i) is sensitive, proprietary and confidential which, if disclosed to or used by others, could cause economic and/or other harm or hardship to the non-disclosing Party and (ii) is marked as “Confidential.” Notwithstanding the foregoing, any such information may be disclosed:

(a) to the extent Buyer determines it is appropriate in connection with efforts to obtain or maintain the PPA Regulatory Approval or the Transmission Cable Regulatory Approvals or to seek rate recovery for amounts expended by Buyer under this Agreement or to the extent Seller determines it is appropriate in connection with Seller’s exercise of its rights under Section 8.2 or Section 8.5, Seller’s efforts to obtain or maintain the Permits, or in connection with any Financing or re-Financing of the Facility;

(b) as required by applicable laws, regulations, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the receiving Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable;

(c) to the Affiliates of either Party or a Party’s Restricted Persons (defined below) and to either Party’s Lenders or potential Lenders and their Representatives (defined below), but solely to the extent they perform a function reasonably related to that information;

(d) in order to comply with any rule or regulation of ISO-NE or any stock exchange or similar Person, or for financial disclosure purposes;

(e) to the extent the non-disclosing Party shall have consented in writing prior to any such disclosure; and

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Section 12.1;

provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. In the case of disclosure to a Governmental Entity, the disclosing Party shall seek or request confidential treatment by the Governmental Entity, to the extent permitted by applicable law, of any information that is marked “confidential” on every page or section that is deemed confidential by the Party to whom such information belongs. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Section 12.1.

12.2 Restricted Persons. Notwithstanding any other provision herein, the Parties acknowledge that no person or entity shall be deemed to be a Restricted Person solely because he or she possesses knowledge of the Agreement. For the avoidance of doubt, persons or entities who are not Restricted Persons shall not be bound by this Agreement in any respect, and neither Party’s Investors (defined below) or their Affiliates shall be restricted in any manner by this Article 12 with respect to any activities including without limitation (x) the trading of any securities, conducted by Employees (defined below) or Representatives thereof who are not Restricted Persons and (y) any activities of such Employees or Representatives in their capacity acting for a Party. The definitions set forth in this Section 12.2 shall apply to this Article 12. For purposes of this Section 12.2, “Restricted Persons” means (i) the managers, directors, officers, members of the board of managers or directors, and employees of a Party (“Employees”), (ii) the attorneys, financial advisors, bankers, consultants and accountants or other representatives of a Party (“Representatives”), (iii) the members, Affiliates, shareholders, predecessors, subsidiaries or investors of a Party (“Investors”) and (iv) the Employees, Representatives and Investors of each person and entity described in clauses (i) through (iii) above, in each case, where such Restricted Person has actually received Confidential Information of a disclosing Party and, for the avoidance of doubt, only in respect of such Confidential Information actually received.

### 13. INDEMNIFICATION AND INDEMNIFICATION PROCEDURES

13.1 Indemnification. Each Party (the “Indemnifying Party”) shall indemnify, defend and hold the other Party, its Affiliates and each of their direct or indirect members, shareholders, investors or unitholders, and their respective managers, members of the Board of Directors or Managers, officers, employees and agents (including, but not limited to, contractors and their employees) (each an “Indemnified Party”), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever (collectively, “Claims”) brought by third parties against the Indemnified Party related to this Agreement and arising from the Indemnifying Party’s gross negligence or willful misconduct, except that the Indemnifying Party shall not have any obligations under this Section 13.1 to the extent arising out of the gross negligence or willful misconduct of any Indemnified Party.

13.2 Additional Seller Indemnification. In addition to the indemnification set forth in Section 13.1, Seller shall indemnify Buyer and each of its direct or indirect members, shareholders, investors or unitholders, and their respective managers, members of the Board of Directors or Managers, officers, employees and agents (including, but not limited to, contractors and their employees)(each also being considered an “Indemnified Party” under this Agreement), harmless from and against all Claims arising out of or related to any environmental matters relating to the Facility or the Facility site, except to the

extent arising out of the gross negligence or willful misconduct of Buyer or any Indemnified Party of Buyer.

13.3 Indemnification Procedures. Each Indemnified Party shall promptly notify the Indemnifying Party of any claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 13. Such notice shall be given as soon as is reasonably practicable after the Indemnified Party becomes aware of each claim; provided, however, that failure to give prompt notice shall not adversely affect any claim for indemnification hereunder except to the extent the Indemnifying Party's ability to contest any claim by any third party is materially adversely affected. The Indemnifying Party shall have the right, but not the obligation, at its expense, to contest, defend, litigate and settle, and to control the contest, defense, litigation and/or settlement of, any claim by any third party alleged or asserted against any Indemnified Party arising out of any matter in respect of which such Indemnified Party is entitled to be indemnified hereunder. The Indemnifying Party shall promptly notify such Indemnified Party of its intention to exercise such right set forth in the immediately preceding sentence and shall reimburse the Indemnified Party for the reasonable costs and expenses paid or incurred by it prior to the assumption of such contest, defense or litigation by the Indemnifying Party. The Indemnifying Party shall have the right to select legal counsel to defend a claim for which the Indemnified Party is seeking indemnification pursuant to this Section 13.3, subject to the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. If the Indemnifying Party exercises such right in accordance with the provisions of this Article 13 and any Indemnified Party notifies the Indemnifying Party that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, such Indemnified Party may do so at its own expense. If the Indemnifying Party fails to exercise its rights set forth in the third sentence of this Section 13.3, then the Indemnifying Party will reimburse the Indemnified Party for its reasonable costs and expenses incurred in connection with the contest, defense or litigation of such claim. No Indemnified Party shall settle or compromise any claim in respect of which the Indemnified Party is entitled to be indemnified under this Article 13 without the prior written consent of the Indemnifying Party; provided, however, that such consent shall not be unreasonably withheld by the Indemnifying Party.

13.4 Survival. The provisions of this Section 13 shall survive the expiration or earlier termination of this Agreement.

## 14. ASSIGNMENT

14.1 Prohibition on Assignments. Except as permitted by this Article 14, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder. Any purported assignment not in compliance with these provisions shall be null and void.

14.2 Permitted Assignment by Seller. Seller shall have the right to assign this Agreement without consent of Buyer (i) to an Affiliate of Seller, and (ii) in connection with any Financing in

connection with the development, construction, and ownership of the Facility (or any refinancing of that Financing), including, in each case, any assignment by operation of law resulting from any of the foregoing transactions.

14.3 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with (i) any merger or consolidation of Buyer with or into another Person; (ii) any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property; (iii) any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer, or (b) to any substitute purchaser of the Products, provided that, in the case of either (a) or (b), either (1) the proposed assignee's credit rating as established by S&P or Moody's (or the credit rating of its nearest direct or indirect parent if that proposed assignee does not have such a credit rating) either (x) is equal to or better than BBB from S&P or Baa2 from Moody's or (y) is equal to or better than that of Buyer at the time of the proposed assignment, or (2) such assignment or, in the case of clause (a) above, the transaction associated with such assignment, has been approved by a Rhode Island Governmental Entity with jurisdiction over such assignment or transaction.

## 15. NON-RECOURSE

The Parties agree that their obligations arising under (or relating to) this Agreement shall be without recourse to any member, unitholder, shareholder or partner of either Party, any controlling Person thereof, or any successor of any such member, unitholder, shareholder, partner or controlling Person (each a member of the "**Extended Group**"); and no member of the Extended Group shall have any liability in such capacity for the obligations of either Party. For the avoidance of doubt, each member of the Extended Group is a third-party beneficiary of this Section 15. The Parties reserve the right to modify or terminate this Agreement without the consent of any member of the Extended Group.

## 16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. Information provided under this Section 16.1 shall constitute Confidential Information. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

16.2 Consolidation of Financial Information. The Parties agree that generally accepted accounting principles and SEC rules require Buyer to evaluate whether Buyer must consolidate Seller's financial information on Buyer's financial statements. Buyer shall require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines at any time that such consolidation is required, Buyer shall require the following from Seller within fifteen (15) days after the end of every calendar quarter for the Term of this Agreement:

- (a) complete financial statements and notes to financial statements for such quarter;
- (b) financial schedules underlying such financial statements; and
- (c) access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer under this Section 16.2 shall be Confidential Information except that such information may be disclosed for financial statement purposes.

## 17. NOTICES

(a) Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) delivered by fax or electronic mail (notices sent by fax or electronic mail shall be deemed given upon confirmation of delivery); in each case addressed as follows or to such other addresses as may hereafter be designed by either Party to the other in writing:

If to Buyer: Madison N. Milhous  
Director  
National Grid  
100 E. Old Country Road  
Hicksville, NY 11801-4218  
Fax: (516) 545-3130  
Email: madison.milhous@us.ngrid.com

With a copy to: Ronald T. Gerwatowski, Esq.  
Deputy General Counsel  
National Grid  
40 Sylvan Road  
Waltham, MA 02451-1120  
Fax: (781) 907-5701  
Email: ronald.gerwatowski@us.ngrid.com

If to Seller: William M. Moore  
Chief Executive Officer  
Deepwater Wind Block Island, LLC  
c/o Deepwater Wind Holdings, LLC  
36-42 Newark St., Suite 402  
Hoboken, NJ 07030  
Fax: (201) 850-1716  
Email: wmoore@dwwind.com

With a copy to: Jeffrey M. Grybowski  
Hinkley, Allen & Snyder, LLP  
50 Kennedy Plaza, Suite 1500  
Providence, RI 02903-2319  
Fax: (401) 457-5177  
Email: jgrybowski@haslaw.com

(b) Prior to Commercial Operation, each Party shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Agreement.

## 18. WAIVER AND MODIFICATION

This Agreement may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of or acquiescence in or to such provision. Buyer shall determine in its sole discretion whether any amendment or waiver of the provisions of this Agreement shall require PUC approval or filing, and if Buyer determines that PUC approval or filing is required for any amendment or waiver of the provisions of this Agreement, then such amendment or waiver shall not become effective unless and until such PUC approval is obtained or such PUC filing is made.

## 19. INTERPRETATION

19.1 Choice of Law. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Rhode Island (without regard to its principles of conflicts of law).

19.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of this Agreement. The words “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

19.3 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is (i) a “forward merchant” within the meaning of the United States Bankruptcy Code and (ii) an “eligible commercial entity” and an “eligible contract participant” within the meaning of the United States Commodities Exchange Act.

19.4 Change in ISO-NE Rules or ISO-NE Practices. This Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material

alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties' original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement. The intent of the Parties is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Price.

#### 19.5 Standard of Review.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. \_\_\_ (2008) ( the "Mobile-Sierra" doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

## 20. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of this Agreement may be executed, and each shall have the same force and effect as an original. Facsimile signatures hereon or on any notice or other instrument delivered under this Agreement shall have the same force and effect as original signatures.

## **21. NO DUTY TO THIRD PARTIES**

Except as provided in any consent to assignment of this Agreement, and as provided in Section 13 and Section 15, nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement.

## **22. SEVERABILITY**

If any term or provision of this Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law. For the avoidance of doubt, this Agreement shall survive any repeal, modification or amendment of R.I.G.L. §39-26.1.

## **23. INDEPENDENT CONTRACTOR**

Nothing in this Agreement shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be the agent of the other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

## **24. ENTIRE AGREEMENT**

This Agreement shall constitute the entire agreement and understanding between the Parties hereto and shall supersede all prior agreements and communications.

## **25. LENDER'S RIGHTS**

(a) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under Section 9 to any Lender of which Buyer shall have written notice, and Buyer shall afford each such Lender the same opportunities to cure defaults under this Agreement as are provided to Buyer hereunder; provided, however, that Buyer shall have no liability to any Lender unless that Lender agrees to assume all of the obligations of Seller under this Agreement.

(b) Assignment to Lenders. Seller may pledge or assign the Facility, this Agreement or the revenues under this Agreement to any Lender as security for the project financing of the Facility, subject to Buyer's execution of a consent to assignment that is in form and substance reasonably satisfactory to Seller and such Lender that incorporates terms and conditions customary for a transaction of this type; provided, however, that Buyer shall not be obligated to enter into any consent which will adversely affect Buyer's rights under this Agreement. Buyer shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender.

**[Signature page follows]**

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Agreement to be duly executed on its behalf as of the date first above written.

**THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID**

By: Thomas B. King  
Name: Thomas B. King  
Title: President

**DEEPWATER WIND BLOCK ISLAND, LLC**

By: Deepwater Wind Rhode Island, LLC, its Member  
By: Deepwater Wind Holdings, LLC, its Member

By: \_\_\_\_\_  
Name: William M. Moore  
Title: Chief Executive Officer and Managing Director

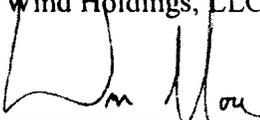
IN WITNESS WHEREOF, each of Buyer and Seller has caused this Agreement to be duly executed on its behalf as of the date first above written.

**THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID**

By: \_\_\_\_\_  
Name: Thomas B. King  
Title: President

**DEEPWATER WIND BLOCK ISLAND, LLC**

By: Deepwater Wind Rhode Island, LLC, its Member  
By: Deepwater Wind Holdings, LLC, its Member

By:  \_\_\_\_\_  
Name: William M. Moore  
Title: Chief Executive Officer and Managing Director

## **EXHIBIT A**

### DESCRIPTION OF FACILITY

**Facility:** The Facility will be a wind generating facility to be located in the waters off the coast of Block Island, Rhode Island. The nameplate capacity of the Facility will be no more than thirty (30) MW.

This Exhibit A will be supplemented with the Operational Limitations prior to Commercial Operation.

**EXHIBIT B**

**SELLER'S PERMITS**

Part 1 – Permits

a. Construction Permits

<b>Federal Permits</b>	<b>Regulatory Authority(ies)</b>
Right-of-Way Grant (Federal Waters)	Mineral Management Service
Section 10	United States Army Corps of Engineers (USACE)
NEPA Review	Federal Lead Agency – USACE
Essential Fish Habitat Consultation and T&E (Section 7 of the ESA, Magnuson-Stevens Act and Marine Mammals protection Act) Consultation	National Marine Fisheries Service (NMFS)
T&E (Section 7 of the ESA) Consultation	United States Fish and Wildlife Service (USFWS)/ NMFS
Cultural Resources (Section 106 NHPA)	Tribes/Rhode Island Natural History Survey
Determination of no hazard to vessel traffic and Approval for private aid to navigation	United States Coast Guard (USCG)
Conformity Determination/Air Emissions Permit	United States Environmental Protection Agency (USEPA)
Notice of Proposed Construction or Alteration	Federal Aviation Administration (FAA)
<b>State Permits</b>	<b>Regulatory Authority(ies)</b>
State Assent	Rhode Island Coastal Resources Management Council (CRMC)
Marine Dredging Permit	CRMC
Coastal Consistency Determination	CRMC
Lease/License of Offshore Land	CRMC
Coastal and Freshwater Wetlands Permit	CRMC/RIDEM
Determination of Consistency with WQM Plan	CRMC

Section 106 Consultation	Rhode Island Natural History Survey
Road Use permits (cable installation)	RIDOT
<b>Local/County Permits</b>	<b>Regulatory Authority(ies)</b>
Storm water Pollution Prevention Plan Approval	County and/or municipal departments and agencies in New Shoreham, Wakefield, Narragansett Beach, and Washington County
Temporary Dewatering Permit	
County Engineering Approval	
Tree Removal Approval	
Temporary Fencing Approval	
Local Site Plan Approval	
Zoning Certificates or Variances	
Engineering Release	
Construction Permits	

b. Operating Permits

<b>Federal Permits</b>	<b>Regulatory Authority(ies)</b>
Market-Based Rate Authority (unless exempt)	Federal Energy Regulatory Commission (FERC)
Exempt Wholesale Generator Certification or Qualifying Facility Certification or Self-Certification	FERC
Federal Power Act Section 204 Blanket Authorization	FERC
Order accepting the Interconnection Agreement (if applicable)	FERC

## **EXHIBIT C**

### **FORM OF PROGRESS REPORT**

For the Quarter Ending: \_\_\_\_\_

Status of construction and significant construction milestones achieved during the quarter:

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

Events during quarter expected to results in delays in Commercial Operation:

Current projection for Commercial Operation:

## EXHIBIT D

### Insurance Requirements

1 Prior to the commencement of construction of the Facility, through final expiration or longer where specified below, Seller shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA its direct and indirect parents, subsidiaries and affiliates (the “Insured Entities”)), covering all Operations, Work and Services to be performed by Seller under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which meet or exceed the requirements listed herein:

- (a) **Workers’ Compensation and Employers Liability insurance** as required by the State in which the Work activities under this Agreement will be performed. If applicable, Coverage shall include the U.S. Longshoreman’s and Harbor Workers Compensation Act, and the Jones Act. The employer’s liability limit shall be \$500,000 each per accident, per person disease, and disease by policy limit.
- (b) **Commercial General Liability (CGL) Insurance**, covering all operations to be performed by or on behalf of Seller under or in connection with this Agreement, with combined single limits for bodily injury and property damage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- Coverage shall include: contractual liability (with this Agreement, and any associated verbal agreements, being included under the definition of “Insured Contract” thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U).
  - If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.
  - Additional Insured as required in Article 3 below,
  - The policy shall contain a separation of insureds condition.
  - In the event Seller is a governmental entity such as a town, county, municipality etc., and such entity’s liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the “Law”), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an Insured Entity.
- (c) **Automobile Liability**, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Seller under or in connection with this Agreement with a combined single limit of liability for bodily injury and property damage of \$1,000,000 per accident.

Additional Insured as required in Article 3 below.

- (d) **Umbrella Liability or Excess Liability** coverage, with a **minimum** per occurrence limit of \$4,000,000. This coverage shall run concurrent to the CGL required in Article 1(b) above, shall apply excess of the required automobile, CGL and employer’s liability coverage required in this Exhibit D, and shall provide additional insured status as outlined in Article 3 below.
- (e) **Watercraft Liability**, if used in connection with this Agreement, with the same limits of liability as outlined in requirement 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as outlined in article 3.

- (f) **Aircraft Liability**, if used in connection with this Agreement, with a limit of liability of \$10,000,000 combined single limit per occurrence, and naming the Insured Entities, including their officers and employees, as additional insured's as required in Article 3 below. Such coverage shall not include a per-passenger or per seat coverage limit.
- (g) **Contractors Pollution Liability (CPL)**: covering sudden and accidental pollution liability which may arise out of, under, or in connection with the performance of this Agreement, by or on behalf of Seller, or that arise out of the Seller's use of any owned, non-owned or hired vehicles, with a combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence and in the aggregate.

This requirement may be satisfied by providing either this CPL policy, which would include naming the Insured Entities, including their officers and employees, as additional insured's as outlined in Article 3 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event Seller is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, Seller agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement.

- (h) **Risk of Loss**: Seller shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control. If this coverage is excluded from the Commercial General Liability policy, then coverage will be acceptable under Seller's property policy.

In the event that any equipment or materials (Goods) are supplied by the Insured Entities, an Insured Entities' representative will provide the insurable value of the Goods to Seller in writing, both cumulatively and on a maximum per item basis. Seller will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of Seller. Such insurance shall cover all Goods outlined in the Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Entities, as a Loss Payee with respect to their insurable interest as required in Article 3 below.

- (i) **Limits**: Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in items 1 b, c & d above.

If the term of this agreement is longer than five (5) years, in the fifth year, and every five (5) years thereafter, the Commercial General Liability and Umbrella/Excess Liability insurance limits required above shall be increased by the percentage increase in the Consumer Price Index from the month the Agreement was executed to the month immediately preceding the first month of the year in which the increase is required.

- 2. **Self-Insurance**: Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Exhibit D. Such acceptance shall become a part of this insurance provision by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

In order for self insurance to be accepted, Seller's unsecured debt must have a financial rating of at least investment grade. For purposes of this section, "Investment Grade" means (i) if Seller has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; (ii) if Seller has a Credit Rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3; or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then the equivalent credit rating assigned to an entity by such additional or alternative rating agency that is equal to or better than "BBB-" from S&P and/or "Baa3" from Moody's.

- 3 **Additional Insured and Loss Payee:** The intent of the Additional Insured requirement under the CGL, Auto, CPL, Umbrella/Excess, Aircraft and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured's for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of Seller, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its subsidiaries and affiliates shall be named as additional insured.**

The Loss Payee language, as required in article 1.h above, shall read as follows: **National Grid USA, its subsidiaries and affiliates shall be included as a Loss Payee as their interest may appear.**

To the extent Seller's insurance coverage does not provide the full Additional insured coverage as required herein, Seller agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in Seller's insurance coverage that may be out of compliance with this insurance requirement.

- 4 **Waiver of Recovery:** Seller and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by Seller. To the extent Seller's insurance carriers will not waive their right of subrogation against the Insured Entities, Seller agrees to indemnify the Insured Entities for any subrogation activities pursued against them by Seller's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.
- 5 **Contractors:** In the event Seller uses Contractors in connection with this Agreement, it is expressly agreed that Seller shall have the sole responsibility to make certain that all Contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. Seller shall remain liable for the performance of the Contractor, and such sub-contract relationship shall not relieve Seller of its obligations under this agreement.

Unless agreed to in writing the by the Risk Management Department of National Grid USA Service Company, any deductible or self insured retentions maintained by any Contractor, which shall be for the account of the Contractor, and shall not exceed \$1,000,000. In addition, Contractor shall name both the Seller and National Grid USA, (including their subsidiaries, affiliates, officers and employees), as additional insured's under the Commercial General Liability and Umbrella/Excess Liability insurance. If requested by National Grid, Seller shall provide National Grid with an insurance certificate from its Contractor evidencing this coverage.

In the event any Contractor is unable to maintain all of the same insurance coverage as required in this insurance article, Seller shall notify National Grid and the Parties shall reasonably agree to replacement insurance given the scope and nature of the works of Contractor.

- 6 **Insurance Certification:** Upon execution of this Agreement, Seller shall promptly provide National Grid with (a) **Certificate(s) of Insurance** for all coverage's required herein at the following address:

National Grid  
Attn: Risk Management Bldg. A-4  
300 Erie Boulevard West  
Syracuse, NY 13202

Such certificates, and any renewals or extensions thereof, shall outline the amount of deductibles or self-insured retentions which shall be for the account of Seller. Such deductibles or self-insured retentions shall not exceed \$1,000,000 unless agreed to in writing by the Risk Management Department of National Grid USA Service Company, whose approval shall not be unreasonably withheld, delayed or conditioned.

Seller shall endeavor to provide National Grid with at least 30 days prior written (10 days for non-payment of premium) notice of any cancellation or diminution of the insurance coverage required in this insurance article.

- 7 **Insurance Obligation:** If any insurance coverage is not secured, maintained or is cancelled and Seller fails to timely procure other insurance as specified, National Grid has the right, but not the obligation, to procure such insurance and to invoice Seller for said coverage.
- 8 **Incident Reports:** Seller shall furnish the Risk Management Department of National Grid USA Service Company with copies of any non-privileged accident or incident report(s)(collectively, the "Documents") sent to Seller's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services performed by or on behalf of Seller under or in connection with this Agreement, excluding any accidents or incidents occurring on Seller property. If any of the National Grid Companies are named in a lawsuit involving the operations and activities of Seller associated with this Agreement, Seller shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by National Grid. However, in the event such Documents are deemed privileged and confidential (Attorney Client Privilege), Seller shall provide the relevant facts of the accident or incident in a format that does not violate such Attorney Client Privilege.
- 9 **Other Coverage:** These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, Seller shall comply with any governmental site specific insurance requirements even if not stated herein.
- 10 **Coverage Representation:** Seller represents that it has the required policy limits available, and shall notify National Grid USA Service Company's Risk Management Department in writing when the coverage's required in this article herein have been reduced as a result of claims payments, expenses, or both. However, this obligation does not apply to any claims that would be handled solely with in Seller's deductible or self-insured retention.
- 11 **Responsibility:** The complete or partial failure of the Seller's insurance carrier to fully protect and indemnify the Insured Entities per the terms of the Agreement, including without limitation, this Exhibit D, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of the Seller to the Insured Entities.
- 12 **Coverage Limitation:** Nothing contained in this article is to be construed as limiting the extent of the Seller's responsibility for payment of damages resulting from all operations, work and services to be

performed by or on behalf of Seller under or in connection with this Agreement, or limiting, diminishing, or waiving Seller's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

## EXHIBIT E

### PRICING AND PAYMENTS

1. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit E, with respect to any month, pay to Seller, in immediately available funds, for each MWh Delivered by Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof with respect to the applicable calendar year in which such month occurs (as adjusted pursuant to the applicable provisions of this Exhibit E). In addition, Seller shall, if applicable, provide Buyer with the credit set forth on Appendix Y (the “**Wind Outperformance Adjustment Credit**”).
2. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:  
  
RECs = The “Alternative Compliance Payment Rate” published by the PUC for the applicable billing period.  
  
Energy = The \$/MWh price of Energy for the applicable month shall be equal to the Bundled Price per MWh less the RECs allocation determined under this Section 2 for the applicable billing period and the \$/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section 3 for that billing period.
3. Adjustment to Bundled Price for Forward Capacity Market Payments. Beginning in the fourth Contract Year, each monthly payment due to Seller under this Exhibit E will be reduced by the amount that Seller is or would have been eligible to receive in the ISO-NE Forward Capacity Market or any replacement market for capacity in ISO-NE, without regard to whether the Facility has actually qualified as a Capacity Resource in the Forward Capacity Market or whether the Facility has received a Capacity Supply Obligation for the Capacity Commitment Period during which the applicable billing period occurred. If the Facility has not qualified as a Capacity Resource or received a Capacity Supply Obligation for the relevant Capacity Commitment Period, Buyer shall calculate the reduction due under this Section 3 assuming that the Facility had qualified as a Capacity Resource and received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

## APPENDICES

Appendix X: Bundled Price per MWh

Appendix Y: Wind Outperformance Adjustment Credit

**Appendix X**

**Bundled Price per MWH**

The Bundled Price per MWH shall be \$235.75/MWh, commencing in 2012. Subject to Section 5.1(b), the Bundled Price per MWH shall escalate by a factor of 3.5% on each Escalation Date.

**Appendix Y**

**Wind Outperformance Adjustment Credit**

1. The notice delivered under Section 3.3(b)(i) notifying Buyer that Commercial Operation has occurred shall set forth the nameplate generating capacity of the Facility (the "**Nameplate Capacity**").
2. Commencing after Commercial Operation, Seller shall establish and maintain records of the following accounts as of the end of each Contract Year:
  - (a) The Target Production Account, which shall set forth (i) for each Contract Year, an amount (the "**Annual Production Target**"), measured in MWh, equal to the product of (x) the Nameplate Capacity; (y) 8760 hours and (x) a target net capacity factor of 40%; and (ii) as of the end of each Contract Year, the cumulative aggregate of all Annual Production Targets during the Services Term, through such date (the "**Aggregate Production Target**"); and
  - (b) The Actual Production Account, which shall set forth (i) for each Contract Year, the quantity of Product, measured in MWh, Delivered to or Rejected by Seller (the "**Actual Annual Production**"); and (ii) as of the end of each Contract Year, the cumulative aggregate of all Actual Annual Production during the Services Term, through such date (the "**Aggregate Actual Production**").
3. If, as of the end of any Contract Year, the Aggregate Actual Production exceeds the Aggregate Production Target, as adjusted pursuant to the last sentence of this paragraph (the "**Production Surplus**"), then, Seller shall calculate the quantity of Product equal to 50% of such Production Surplus and shall credit such quantity (the "**Wind Outperformance Adjustment Credit**") to Buyer in the next billing cycle, without charge (carrying over any unused credit to subsequent billing cycles if necessary). The amount of any Production Surplus as of the end of any future Contract Year shall be adjusted by deducting the cumulative aggregate Production Surplus from all prior Contract Years (the "**Aggregate Prior Surplus**").
4. Notwithstanding the foregoing, Seller shall not have any obligation to credit any quantity of Product to Buyer, or to make any payment in respect of any surplus in the Aggregate Actual Production over the Aggregate Production Target as of the last Contract Year of the Services Term.

**EXAMPLE**

Nameplate Capacity: 28.8MW	TARGET PRODUCTION ACCOUNT (MWh)		ACTUAL PRODUCTION ACCOUNT (MWh)		SURPLUS	
	Annual Production Target	Aggregate Production Target	Actual Annual Production	Aggregate Actual Production	Aggregate Prior Surplus	Production Surplus
2012-2013	100915.2	100915.2	99000	99000		-1915.2
2013-2014	100915.2	201830.4	98000	197000		-4830.4
2014-2015	100915.2	302745.6	102000	299000		-3745.6
2015-2016	100915.2	403660.8	112000	411000		7339.2
2016-2017	100915.2	504576	103000	514000	7339.2	2084.8
2017-2018	100915.2	605491.2	102000	616000	9424	1084.8
2018-2019	100915.2	706406.4	100000	716000	10508.8	-915.2

Explanation: In Contract Years 2012-2013 through 2014-2015, there is no Production Surplus and hence no credit is given in the subsequent Contract Year. In Contract Years 2015-2016 through 2017-2018, there is a Production Surplus of which 50% is credited to Buyer in the subsequent Contract Year. In Contract Year 2018-2019, there is no Production Surplus, and hence no credit is paid in Contract Year 2019-2020.

## EXHIBIT F<sup>1</sup>

### Form of Certification of Extension, New Escalation Date and New Contract Years

Deepwater Wind Block Island, LLC (“**Seller**”) delivers this certification pursuant to Sections 1 and 5.1(b) of the Power Purchase Agreement dated as of [\_\_\_\_\_] (the “**Agreement**”) between Seller and The Narragansett Electric Company, d/b/a National Grid (“**Buyer**”). All capitalized terms not defined herein have the meanings given to them in the Agreement.

Seller certifies as follows:

1. Seller has elected to [extend the Commercial Operation Date pursuant to Section 3.1(b) of the Agreement] [extend the Services Term pursuant to Section 4.4(b) of the Agreement] [extend the Services Term pursuant to Section 10.3 of the Agreement], and the total period of such extension is [\_\_\_\_\_] days.

2. As a result of such extension and taking into account all prior extensions of the Commercial Operation Date and Services Term under the Agreement:

a. the Services Term [will begin on [\_\_\_\_\_] and] will end on [\_\_\_\_\_].

b. the Escalation Date from today until the earlier of the expiration of the Term or the election by Seller of another extension pursuant to Section 3.1(b) of the Agreement, Section 4.4(b) of the Agreement or Section 10.3 of the Agreement, shall be [\_\_\_\_\_] of each year.

c. each Contract Year from today until the earlier of the expiration of the Services Term or the election by Seller of another extension pursuant to Section 4.4(b) or Section 10.3 of the Agreement [will begin on [\_\_\_\_\_] of each calendar year and will end on [\_\_\_\_\_] of each calendar year, subject to further adjustments in accordance with Section 1 of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certification this [\_\_] day of [\_\_\_\_\_].

DEEPWATER WIND BLOCK ISLAND, LLC

By: \_\_\_\_\_  
Name:  
Title:

<sup>1</sup> The language in this Exhibit will be revised appropriately if Buyer elects to extend the Services Term under Section 10.3 of the Agreement.

Acknowledged and Agreed:

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID

By: \_\_\_\_\_

Name:

Title:





State of Rhode Island and Providence Plantations  
State House  
Providence, Rhode Island 02903-1196  
401-222-2080

Donald L. Carcieri  
Governor

October 29, 2009

Elia Germani, Chairman  
Paul J. Roberti, Commissioner  
Mary E. Bray, Commissioner  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, R.I. 02888

RE: Review of Proposed Town of New Shoreham Project Pursuant to R.I.  
General Laws 39-26.1-7, Docket No. 4111

Dear Chairman Germani and Commissioners Bray and Roberti:

I am writing to support and encourage the Commission in its important role in this proceeding to facilitate, as soon as reasonably possible, a long-term contract between National Grid and Deepwater Wind for the development of an off-shore renewable energy wind project to be located off the coast of Block Island specifically designed to help the citizens and economy of Rhode Island.

During its 2009 session, the General Assembly passed, and I signed into law, legislation to advance the development of new renewable energy resources through "commercially reasonable long-term contracts between electric distribution companies and developers." This landmark legislation was the culmination of more than two years of intense negotiations between the Executive and Legislative branches of government, as well as various other stakeholders and interested parties. In fact, it is this legislation that authorizes this very proceeding, and thus prompted me to write to you today.

In passing the Long-Term Contracting Standard for Renewable Energy, the State made a public policy decision to foster renewable energy development with the goals of "stabilizing long-term energy prices, enhancing environmental quality, creating jobs in the Rhode Island renewable energy sector, and facilitating the financing of renewable energy generation" that provides direct economic benefits to the State.

I believe it is important to consider all of these policy objectives – energy, environmental and economic development – when evaluating an eventual contract between Deepwater Wind and National

Elia Germani, Chairman  
Paul J. Roberti, Commissioner  
Mary E. Bray, Commissioner  
Rhode Island Public Utilities Commission  
October 29, 2009  
Page 2

Grid for the Block Island off-shore wind demonstration project. It is equally important to recall that these enumerated objectives are consistent with previous legislative enactments, including the Renewable Energy Standard (RES) (R.I.G.L. Chapter 39-26), which reads in part: “the people and energy users of Rhode Island have an interest in having electricity supplied in the state from a diversity of energy sources including renewable sources” (R.I.G.L. §39-26-1). The RES requires public utilities to purchase 16 percent of the state’s power supply from renewable energy sources. The long-term contracting law reinforces the RES, and further states that projects providing direct economic benefits to Rhode Island are the means to accomplishing the State’s policy goals.

In previous decisions, the Commission has cited RES as evidence that “the General Assembly has set forth a policy to encourage investment in renewable energy supply.” It went on to say that, “according to developers, commitments to purchase the energy are important for the financing of renewable energy development. (Docket No. 3659). In a subsequent order, the Commission reiterated its position and stated that “long-term contracts will be necessary for the success of the renewable energy supply.” (Docket No. 3765). In short, the legislative record and the Commission’s reading of that record are clear – long-term contracts for the purchase of renewable power are desirable and necessary in order to stabilize energy prices and grow a green industry domestically.

I am hopeful that such a clear statement of legislative intent will persuade all parties to work for the advancement of its goals, including Rhode Island’s primary electric distribution company, National Grid. Rather than purchasing renewable power from New York and elsewhere, I urge them and the Commission to help Rhode Island grow its nascent renewable energy sector into a vibrant, innovative and job-creating industry.

The issue before the Commission is not whether the State should mandate National Grid to enter into long-term contracts for renewable energy development, but how to structure the contract in a way that protects ratepayers, while meeting the other enumerated goals – economic and environmental.

Make no mistake: I too believe that the energy price presently contained in the proposal before the Commission is excessive. I have always stated that I support cost-effective renewable energy, not renewable energy at any cost. That being said, I further believe that there are contributors to that price that are driven by National Grid’s procurement process, not necessarily by the law.

I have always understood that creating a long term contract for the purchase of renewable energy for the energy needs of Rhode Island would not be easy and would require careful analysis and negotiation. Worthwhile and innovative endeavors are never easy, and thoroughness is appropriate. However, I also knew that a contract would be necessary, and might require the Commission’s oversight and expertise to achieve. In fulfilling that role, I hope the Commission will look beyond price alone during its deliberations in Docket 4111 and will evaluate commercial reasonableness based on the myriad aspects of this proposal and the context of its submission, specifically that it is a demonstration project for wind power.

Elia Germani, Chairman  
Paul J. Roberti, Commissioner  
Mary E. Bray, Commissioner  
Rhode Island Public Utilities Commission  
October 29, 2009  
Page 3

The public policy of the State is to support long-term contracts for “newly developed renewable energy resources” that are consistent with the policy objectives discussed above. The State believes that such contracts can serve as a hedge against the volatile prices of fossil fuels, and therefore provide more stability to our residential, industrial and commercial ratepayers. The Block Island project was proposed as a specific carve out in the recently enacted legislation, because policy makers believe the Town of New Shoreham should benefit from lower electricity rates, but also because the State believes the project can and will be an important demonstration project that will prove out the feasibility and commercially reasonable nature of this resource, and fulfill the promise and future that off-shore wind electric generation will bring to our ratepayers and economy.

If the State is ever to reach its goal of acquiring 16 percent of its electricity from home grown renewable energy projects, it must stop talking and start acting. Rhode Island has limited indigenous energy resources, but an abundance of wind just off our shores. Until that precious resource is tapped and utilized, Rhode Island will make little or no progress in advancing its goals of stabilizing energy prices and growing jobs – both critically important. A necessary step in achieving these goals, and in any great endeavor no matter how big or small, is the first one. That is why I believe it is critically important that Rhode Island’s first foray into this area be a relatively small scale off-shore wind project. The proposed project is large enough to put Rhode Island on the map as a leader in this \$50 billion industry, and small enough to mitigate potential risks to ratepayers, the developer and the State’s utility monopoly. The Block Island project will serve to demonstrate this concept, a very important step in an industry that is often adverse to risk and innovation. Developers and regulators alike can learn best practices and better prepare for the utility scale projects.

In addition, because the proposed project is a demonstration project, it must be remembered that the economics of the project are far different than would occur with a subsequent, utility scale project. The price negotiated here for a long term contract should in no way be viewed as establishing a precedent or indicating what the energy price may be in connection with future wind energy projects. What is commercially reasonable with respect to this project and what is commercially reasonable with respect to future projects are very different matters.

I understand there remain some important matters, such as cable ownership; size of the project, etc. that will require further negotiation, and I am hopeful that Deepwater Wind and National Grid will continue to sit at the negotiating table. I am confident the Commission will do everything in its power to further encourage, facilitate and if necessary arbitrate the terms of a long-term power purchase agreement that is commercially reasonable, stabilizes energy prices, enhances environmental quality and makes Rhode Island a leader in the emerging green economy.

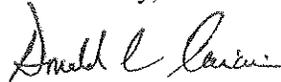
The Commission has in the past stepped forward to take on new challenges in the electric industry, such as the implementation efforts required to satisfy landmark legislation which restructured the industry a decade ago. The Commission, once again, is now called upon to use its expertise over utility matters to ensure that a long-term power purchase agreement for a first-of-its kind renewable energy project is implemented.

Elia Germani, Chairman  
Paul J. Roberti, Commissioner  
Mary E. Bray, Commissioner  
Rhode Island Public Utilities Commission  
October 29, 2009  
Page 4

As I stated when this law was enacted, this important effort will accelerate our efforts to be the first state in the nation to take our energy needs into our own hands, through the development of clean, sustainable renewable energy off our shores. This legislation places Rhode Island at the epicenter for renewable energy on the East Coast, where we have estimated planned projects (beginning with this Block Island project) to produce well over \$1.5 billion in private investment in Rhode Island and the creation of a minimum of 800 jobs with estimated annual wages of \$60 million. The Block Island project is the first step toward energy security as well as achieving our environmental and economic goals. Our focus must be to ensure that the long term contract between National Grid and the developer is completed expeditiously.

I will make my administration fully available to assist in any way needed so that we can together fulfill the goals of this important effort to lead the way toward the development of renewable energy projects for the benefit of Rhode Island. I know you will move forward as quickly as possible to resolve this critical matter.

Sincerely,



Donald L. Carcieri  
Governor

cc: The Honorable M. Teresa Paiva Weed, Senate President  
The Honorable Daniel P. Connors, Senate Majority Leader  
The Honorable Dennis L. Algiere, Senate Minority Leader  
The Honorable William J. Murphy, Speaker  
The Honorable Gordon D. Fox, House Majority Leader  
The Honorable Robert A. Watson, House Minority Leader





CLEAN ENERGY IS JUST OVER THE HORIZON

By Electronic and Express Mail

November 2, 2009

Mr. Madison N. Milhous, Jr.  
Director, Wholesale Market Relations  
National Grid  
100 Old Country Road  
Hicksville, NY 11801

Dear Mr. Milhous:

This letter is a follow-up to Thursday's scheduling conference before the Rhode Island Public Utilities Commission ("PUC"), regarding the Town of New Shoreham Project. As described in the enclosure outlining the key aspects of our revised price offer, Deepwater Wind is proposing a fixed price in 2009 dollars of \$240 per MWH, escalating at 3.5 % annually, subject to National Grid accepting Deepwater's position on the contract terms, as set forth in the current draft of the power purchase agreement ("PPA"). We believe this proposal on price and terms addresses the threshold issue regarding the PPA identified by National Grid in its correspondence to us and to the PUC. We look forward to discussing our revised offer as soon as is practicable.

Just as the matter of price is an important threshold issue for National Grid, it is equally important to ensure that the PPA is commercially reasonable, and reflects standard industry terms. If this consideration is set aside, and the project cannot attract financing, our mutual efforts, and the efforts of many others in Rhode Island, will have been in vain. In particular, the treatment of force majeure events, including transmission cable outages, must not preclude the availability of project financing or tax equity.

We believe that other issues identified in our respective filings before the PUC can be resolved. We also believe that meeting in person is the most effective way to find common ground that will be in the best interests of Rhode Island, its ratepayers and our respective companies. To that end, we are available to resume negotiations with you right away. By commencing this new round of discussions immediately, we are confident that we will be able to meet the PUC's call for the submission of a revised PPA by November 13, 2009.

Thank you for your consideration. I look forward to hearing from you.



CLEAN ENERGY IS JUST OVER THE HORIZON

Sincerely,

*William Moore*

William Moore  
Chief Executive Officer

### **Outline of Revised Price Proposal**

1. **Fixed Price (Bundled Basis)**

<b>Price per MWH in 2009</b>	<b>\$240</b>
------------------------------	--------------

- Applicable to a project having an aggregate nameplate capacity up to 30 MW
- Payable per MWH delivered or rejected by National Grid
- Price is subject to 3.5% escalation

2. **O&M Cost Adjustment**

- None

3. **Capacity Factor Adjustment**

- None

4. **Allocation of Bundled Price Among Energy, Capacity and RECs**

- As previously agreed by the parties



## Summary of Pricing Proposals from Deepwater

### National Grid RFP Response

	<b>10/15/09 Filing (6 WTG) Bundled Energy Rate \$/MWh</b>	<b>10/8/09 (8 WTG) Bundled Energy Rate \$/MWh</b>	<b>11/2/09 (8 WTG) Bundled Energy Rate \$/MWh</b>	<b>11/18/09 Filing Bundled Energy Rate \$/MWh</b>	<b>Post Filing (11/20/09) Bundled Energy Rate \$/MWh</b>	<b>PPA 12/09/09 Filing Bundled Energy Rate \$/MWh</b>
<b>CF and O&amp;M Adjustment</b>	Y	Y	N	N	N	N
<b>Escalation Rate</b>	3.5%	3.5%	3.5%	3.5%	3.5%	3.5%
<b>2009</b>	\$268.00	\$236.40	\$240.00	\$221.00	\$217.00	\$212.63
<b>2013</b>	\$307.53	\$271.16	\$275.41	\$253.60	\$249.01	\$244.00

### Indicative Pricing from 2008 Proposal to Rhode Island

<b>Capacity</b>	\$74.24/KW-yr
<b>Energy</b>	\$91.04/MWh
<b>REC</b>	\$57.92/MWh (ACP)
<b>Escalation Rate</b>	2.5%
<b>Bundled Energy Rate (\$/MWh)</b>	Based on 39% CF; 28% CF for FCM
<b>2008</b>	\$155
<b>2013</b>	\$175



Confidential ESAI Price Forecast

**Exhibit 5**

**REDACTED**

**Pursuant to Commission Rule 1.2(g)  
and by R.I.G.L. § 38-2-2(4)(i)(B).**



# **- Rhode Island Renewable Energy -**

**:**

## ***A Study Of the New England & Rhode Island Renewable Energy Supply and Demand Outlook To 2030***

***For***

## ***National Grid***

A Report Prepared By:

***Energy Security Analysis, Inc.***

***September 4, 2009***

## Energy Security Analysis, Inc. (ESAI)

### Company Overview

Energy Security Analysis, Inc. (ESAI) is an energy research and consulting firm currently working with a large number of power marketers, financial institutions, generators, regulators, developers, and end-users. ESAI's analysis covers all aspects of the Northeast electricity markets including energy pricing, transmission, capacity, renewables, emissions and demand response. ESAI also covers fundamental supply and demand issues in the North American natural gas markets. ESAI provides ongoing research materials to almost 50 clients with specific interests in the Northeast markets.

The economic assumptions, forecasts and insights from ongoing market research activity are applied to specific project work such as asset valuations, transmission congestion analysis, and other relevant market studies. Since 2000, ESAI has performed a wide range of studies for over 100 clients. While the vast majority of this work is proprietary, some of ESAI's work has been featured in the public realm. One example is a study commissioned by PJM to study the benefits inherent with the 2002 to 2005 expansion of the PJM RTO.

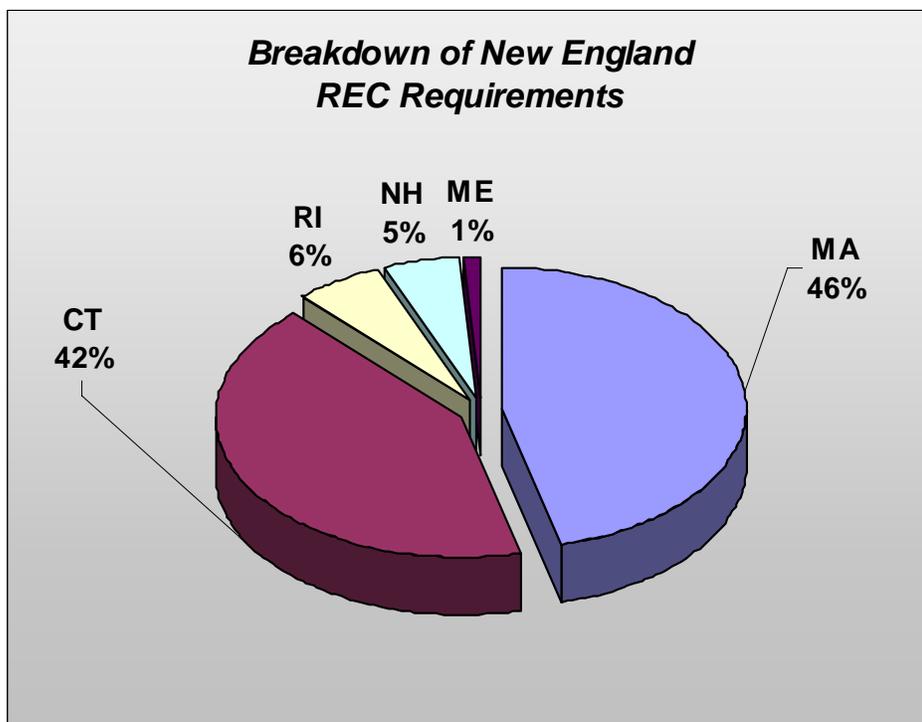
ESAI delivers its market research in the form of quarterly, monthly and weekly reports. The quarterly reports – *CapacityWatch*, *EnergyWatch* and *TransmissionWatch* – provide 10 year outlooks on pricing as well as regulatory and market rule issues. Monthly reports focus on six month outlooks of hub and zonal energy prices, generation and transmission outages, and transmission congestion.

As part of its ongoing research, ESAI tracks individual generation projects (including renewable energy projects) in New England, PJM and New York at all stages of development and construction. This detailed information forms one significant component of ESAI's assessment of the Northeast capacity markets and is a major input to ESAI's energy and capacity price models. ESAI provides its clients with ongoing updates to its forecasts of energy and capacity prices and more importantly, ESAI provides its clients with insights into the fundamental market drivers that impact these markets.

## ***Executive Summary***

This report summarizes the outlook for renewable energy supply and demand in New England and specifically, the outlook for Rhode Island given its position in a competitive New England marketplace. Rhode Island Class 1 “new” renewable energy credits (RECs) are generally equivalent to the Class 1 renewable energy credits that qualify in Massachusetts, Connecticut, and New Hampshire. As such, RECs in these four states are for the most part fungible and the market for Rhode Island RECs needs to be evaluated in the context of the whole New England region.

Five of the six New England states have legislated Renewable Portfolio Standards that mandate minimum requirements for renewable energy supply. Massachusetts has the largest requirement for renewable energy credits (RECs) and is expected to purchase almost half (46 percent) of the renewable energy available in New England during 2009. Connecticut closely follows Massachusetts with 42 percent of the REC demand in New England. Rhode Island and New Hampshire account for combined 12 percent of the demand, while Maine adds an additional 1 percent.



***ESAI’s demand and supply projections include the following critical assumptions:***

- Renewable Portfolio Standards (RPS) impose requirements on load serving entities to supply a percentage of their energy from renewable resources based on their total load. A load growth of 0.8 percent per year based on ISO-NE projections from the 2009 Capacity Energy Loads and Transmission (CELT) report.

- Not all new renewable projects that enter the queue will get built. Both ESAI's experience and historical data from the Northeast pools show that there is roughly a 20 percent probability that new projects will move to completion. Projects that have cleared the 2010/11 and 2011/12 Forward Capacity Market (FCM) auctions are assigned a 100 percent probability of completion.
- ESAI estimates that 1,750 MW of nameplate wind resources (or equivalent) will enter the New England queue each year – a somewhat aggressive assumption. Of this total entering the queue, approximately 350 MW of new 'wind-equivalent'<sup>1</sup> capacity will move to completion and come on-line in New England each year starting in 2012.

**Conclusions of ESAI's analysis are:**

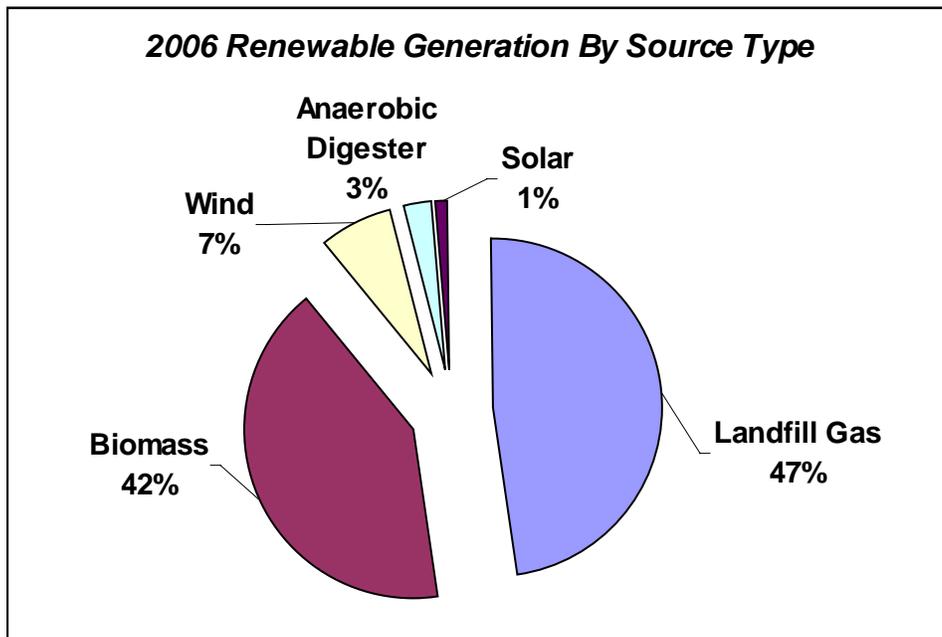
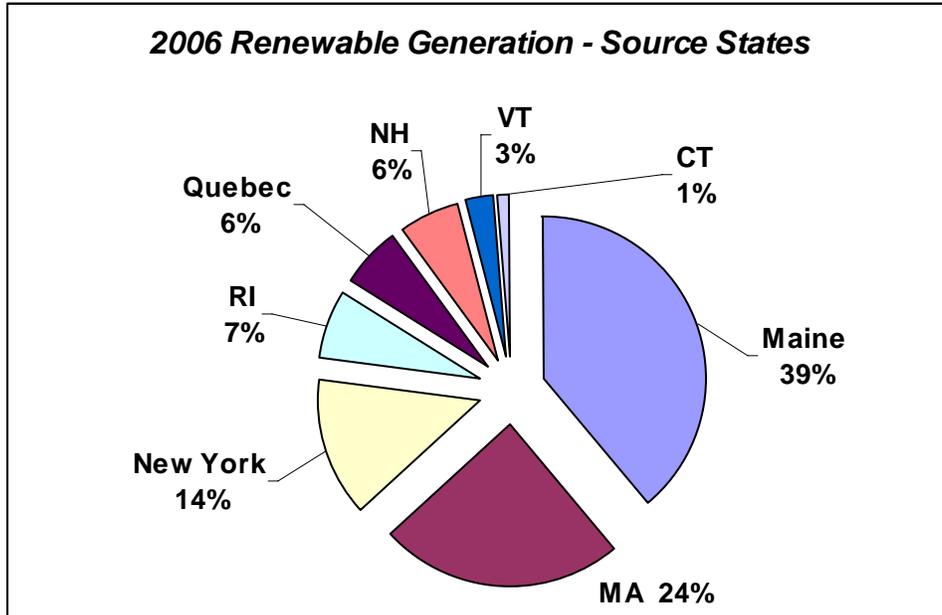
- New England can fully meet renewable requirements through 2010. In 2011, New England will fall short of meeting its Class 1 renewable requirements by approximately 7 percent or 450,000 MWh. New England is unlikely to meet REC requirements for the region from 2012 to 2025.
  - Renewable energy supplies in New England will grow significantly, but the pace of development and construction will lag the pace of increasing renewable energy requirements.
  - New England would need an additional 230 MW per year of wind equivalent resources to meet the gap from 2012 to 2015 (above the 350 MW per year assumed in this analysis).
  - After 2015, the supply/demand gap will widen and an average of 650 MW of wind equivalent resources would be needed to fill the gap from 2016 to 2020 (300 MW above the ESAI new build estimate).
  - After 2020, new REC requirements come only from load growth with no further incremental increases in the percent of load requirements.
- Rhode Island renewable energy supply will increase significantly due to the various RFPs for renewable capacity to be developed and constructed within the state.
  - Prior to 2012, Rhode Island will compete on an equal footing with four New England states (CT, RI, NH, & ME) for renewable resources. Due to Rhode Island's requirement for new resources, ESAI anticipates a small premium for Rhode Island RECs to continue through 2011.
  - The competitive equalizer is the Alternative Compliance Payment (ACP). The ACP is comparable between the five New England states and ensures that, over time, competition will allocate regional RECs proportionally between these states. (The CT ACP does not have a fixed

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<sup>1</sup> Wind resources in New England are assumed to have a 25 percent operating factor. Other resources such as wood chip biomass facilities will have much higher operating factors. A 50 MW biomass plant with an 85 percent operating factor would have the same annual energy output (372,300 MWhs) as 170 MW of wind. The 50 MW biomass plant is the 'wind-equivalent' of 170 MW of wind capacity. Because the majority of new renewable energy must come from wind farms, ESAI uses a wind-equivalent to simplify projections for new capacity.

escalator and thus becomes uncompetitive until such time as it is adjusted. For this reason, CT may fall short on REC purchases compared to the other states with higher ACPs).

- In 2012, Rhode Island will potentially move from deficit to surplus in its state REC balance. Surplus RECs will be sold into the New England market to meet other states' requirements.
- To meet the New England region's renewables targets, energy providers must contract with over 5,000 MW of new wind equivalent resources (~11.0 million MWhs) over the period from 2011 to 2020, over and above current commitment levels.
  - ESAI's outlook assumes that New England will develop and build 350 MW new wind capacity each year in New England.
  - New England energy providers must contract for additional capacity over and above ESAI's 350 MW new capacity assumption or pay the applicable ACP.
  - Rhode Island will be a source of RECs to other New England states starting in 2012, but potential new RFP capacity in Rhode Island has already been counted toward the 350 MW per year new build assumption.
- Renewable energy generation additions would need to be significantly increased from ESAI's projections of 350 MW per year of wind equivalent resources to 650 MW per year, in order for New England to meet the total requirements for Renewable Energy Credits in 2020.
- Imports have increased from 765 GWh in 2007 to 1,215 GWh in 2008, an increase of almost 60 percent. ESAI has assumed that imports in 2009 and beyond will increase by 5.0 percent per year. It is recognized that the increases in imports may be 'lumpy', but overall, we expect a strong increase in imports going forward. If the import trend is to continue, the transmission system would require upgrades to handle the significant increases in flows from Maine, Canada and New York. There have already been occasions in New York where wind generation from units providing RECs to the Massachusetts program have been curtailed due to insufficient transmission capacity.

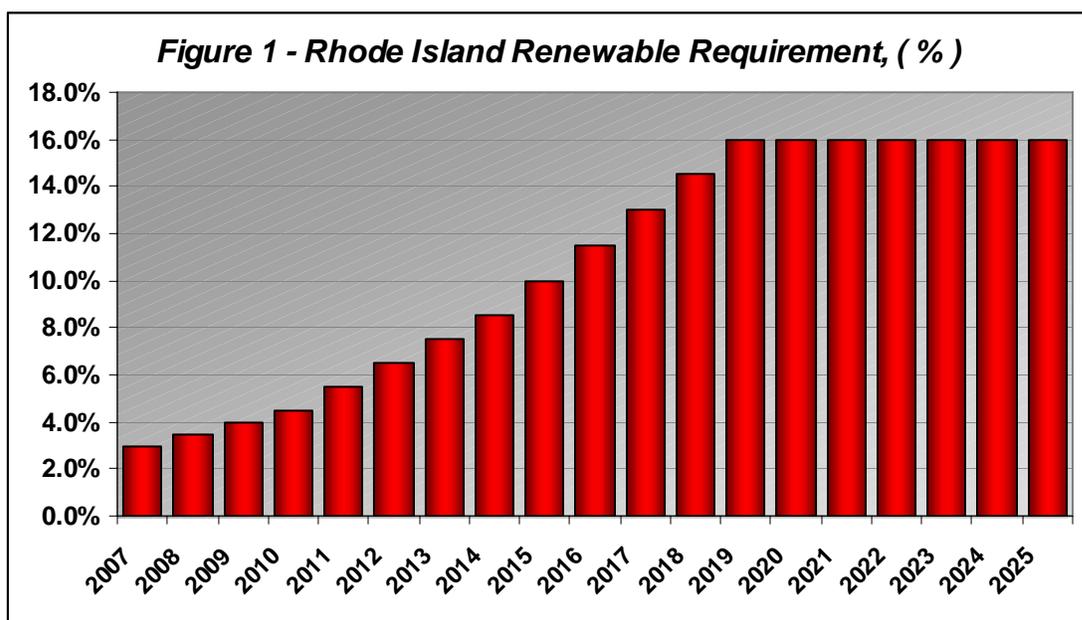


## Background

Twenty seven states have implemented Renewable Portfolio Standards (RPS) and another five states have set renewable energy goals. In New England, Rhode Island has joined four other states (MA, CT, NH and ME) in legislating Renewable Portfolio Standards – Vermont has set a state goal, but not mandated an RPS.

The underlying principle for the Renewable Portfolio Standard is that a stated percentage of a state's energy consumption must be supplied by qualified renewable energy generating resources in a given year. Buyers can contract directly for renewable energy, or may purchase Renewable Energy Certificates (RECs); each REC representing one megawatt-hour of renewable energy.

The Rhode Island RPS was passed in 2004 with a 3.0 percent requirement beginning in 2007. After 2007, the percent of load requirement increases by 0.5 percent each year until 2010 and increases to 1.0 percent from 2011 to 2014. From 2015 to 2019, the requirement increases annually by 1.5 percent to a total of 16 percent (See Figure 1). This 16 percent level of renewable energy must remain in place from 2020 onwards, with new additions required to meet load growth, until the Rhode Island PUC determines that a revision is required or that the standard is no longer necessary.



The Rhode Island RPS limits the amount of renewable energy that can be purchased from older resources (pre-1998) to 2.0 percent. All additional renewable energy must be sourced from 'new' resources placed in service in 1998 or later.

The Rhode Island RPS includes a compliance provision that applies a penalty to energy providers and wholesale consumers that do not self-supply or directly contract for renewable energy supplies. This Alternative Compliance Payment (ACP) is currently \$60.92/MWh and is applied to a customer's renewable energy shortfall. This payment changes each year with an inflation adjustor linked to the Consumer Price Index (2.75 percent assumed in this study) and

the Rhode Island ACP is projected to be above \$80.00/MWh by 2020. The other four New England RPS states also have comparable compliance penalties, although Connecticut does not have a stated escalator.

The renewable energy targets for New England are quite robust and will require significant efforts by the industry to promote and develop the resources that will be needed to meet the stated goals – including the 16 percent of energy consumption in Rhode Island by 2020. To meet this target, New England energy providers must contract with over 5,000 MW of new incremental wind equivalent resources by 2020 in order to secure approximately 11.0 million MWhs of renewable energy.

Currently, New England has 141 MW of existing wind capacity that is part of a total renewable portfolio of just over 1,100 MW<sup>2</sup> of wind equivalent capacity. The current portfolio is dominated by biomass (200 MW) and landfill gas (76 MW). We note that 42 MW of the current 104 MW of wind capacity is located in Aroostock County, Maine and is not directly tied to the New England grid (Mars Hill).

<b>Table 1 - Existing Wind Farms &amp; Wind Farms Under Construction (Sep 2009)</b>			
	<b>Existing Nameplate Capacity, MW</b>	<b>Under Construction, MW</b>	<b>Rank</b>
<b>TX</b>	8361	1095	1
<b>IA</b>	3043	409	2
<b>CA</b>	2787	20	3
<b>NY</b>	1264	21	9
<b>ME</b>	104	92	26
<b>VT</b>	6	0	31
<b>MA</b>	5	4	32
<b>NH</b>	25	0	34
<b>RI</b>	1	0	35
<b>CT</b>	0	0	45

Development of wind projects in the top ten states including Texas, California, Iowa and New York has been considerable over the past few years. Over the past year, Texas has added 2,000 MW of capacity and Iowa has added approximately 1,300 MW. New York has added over 500 MW of wind capacity in the past year, some of which is available for export to New England but most of it is committed to New York State (see Table 1). Although operating nameplate capacity has increased significantly over the past year, the MW under construction have declined significantly. One year ago, Texas had 2,470 MW under construction but that has now dropped to 1,095 MW. Last year, California had 275 MW under construction but now only 20. And in New York, the MW under construction has dropped to 20 MW from 589 MW last year. This is indicative of the difficult economic climate and the more difficult financing

<sup>2</sup> Based on 2009 projected supply at a 25 percent operating factor to determine wind-equivalent portfolio capacity.

terms required of developers to move forward on projects. At a time when renewable requirements are ramping up in many states, the number of projects moving from development to actual construction has slowed considerably.

## ***Rhode Island Renewable Energy – Supply and Demand***

The Rhode Island demand for Renewable Energy Credits (RECs) is a function of its annual electricity demand and the stated annual RPS percentage supply requirement. In 2009, Rhode Island will consume an estimated 8,419 GWh of total applicable electricity sales. With a 4.0 percent renewable energy requirement, Rhode Island will need 337 GWh of renewable energy to meet its target. In 2008, the Rhode Island renewable requirement was 298 GWh. To assess future demand, ESAI projects growth in annual energy consumption through 2020 utilizing the ISO-NE load growth outlook of 0.8% from the most recent April 2009 CELT report<sup>3</sup>.

### Annual Load Growth vs. RPS Requirement Increases

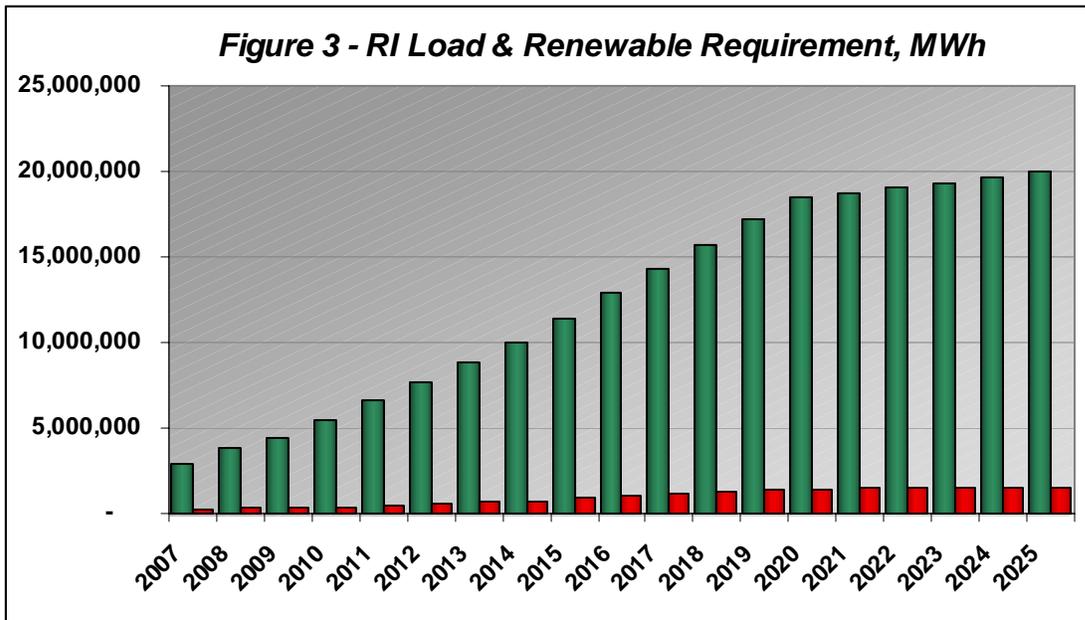
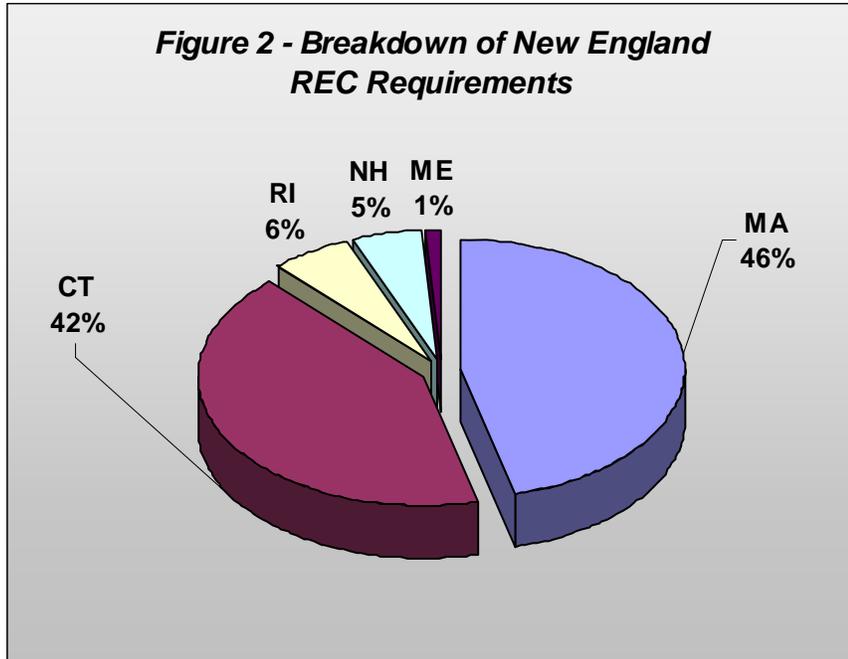
At 0.8 percent, Rhode Island annual load growth equates to roughly 68 GWh per year. If the current 4.0 percent renewable energy requirement is applied against this load growth, the annual increase in requirements due to load growth alone is only 3 GWh. In comparison, the demand increase due to a 1.0 percent requirement increase (starting in 2010) is 85 GWh. Thus, while load growth is an important factor in determining the renewable energy requirements, it is roughly an order of magnitude lower in importance relative to the annual percentage increase in the RPS requirement.

Figure 2 shows that Massachusetts represents almost one half of the renewable energy requirements in New England – 46 percent of total 2009 demand. Connecticut accounts for most of the balance of the New England demand at 42 percent. Given the very low energy demands in New Hampshire and Maine, their renewable energy requirements are much lower. Rhode Island renewable energy requirements are only 6 percent of the New England total.

Rhode Island's percent of total New England demand is only 6 percent, but buyers of Rhode Island RECs must compete against the larger demand interests of Massachusetts and Connecticut. Because the Massachusetts ACP is exactly similar to Rhode Island, Rhode Island buyers will have to pay at least what Massachusetts buyers will pay when Rhode Island is in a deficit position. Although the Rhode Island total requirements are reasonably small, it will pay a price for RECs that are competitively consistent with the larger needs of other buyers in the New England power pool. Figure 3 shows the Rhode Island requirements relative to the total New England requirements. The Rhode Island REC requirements cross 1.0 million MWh in 2018, at which time the New England total requirement is almost 16 million MWh.

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<sup>3</sup> Capacity, Energy, Loads and Transmission Report; <http://www.iso-ne.com/trans/celt/index.html>.



## ***New England Supply Outlook***

ESAI has developed a base year supply portfolio for New England that is based upon the ISO-NE listings of currently qualified renewable resources. Additional resource information such as imported renewable energy is obtained from the participating states' compliance reports and the NEPOOL GIS data.

To determine future supply resources, ESAI makes use of the publicly available ISO-NE generation interconnection queue as the basis for new supply additions as far out as 2013<sup>4</sup>. All renewable generation in the queue has been included in the supply outlook. The resources included in the forecast are assigned completion dates provided by ISO-NE with some adjustments made by ESAI based on its evaluations of each individual project.

The other major differentiator in ESAI's assessment of the queue is the application of a probability of completion parameter. This parameter is applied in three ways in this analysis;

- 1) Under Construction – Projects under construction are assigned a 100 percent probability of completion.
- 2) FCM Cleared – Projects that have cleared the first or second FCM auction are assigned a 100 percent probability of completion.
- 3) FCM Qualified – Projects that have qualified for the third Forward Capacity Auction are assigned a 40 to 50 percent probability of completion. Even though a project qualifies for the auction, there is no guarantee that it will clear in the auction.
- 4) Under Development – Generally projects in various stages development are assigned a 20 percent probability of completion (more discussion on queue probabilities can be found in the next section), though ESAI has assigned some projects that don't meet the first two criteria a higher probability of completion based on their location within Massachusetts and the higher probability of these projects winning RFPs with long term PPAs per the Green Communities Act for in-state renewable commitments. Cape Wind, for example, is assigned a 100 percent probability due to these factors, as well as size and staying power in a long permitting process.

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<sup>4</sup> ESAI's Project Evaluation Program – tracks ongoing generation projects by pool. Each project is assigned a probability of completion percentage based upon a number of factors including development progress, permitting, financial status of developer, local opposition and other factors. ESAI has monitored all Northeast projects since 2001 and publishes quarterly updates in its *Capacity Watch* publication.

ESAI normally utilizes its own assessment of projects under development and construction in New England. However, for the purposes of this report, ESAI is using the publicly available ISO-NE data for the generation interconnection queue.

## Assessing the Generation Queue

### Developing the Forecast Probability of Completion Number

All new generation projects or expansions in ISO-NE must go through the generation interconnection process. Projects are entered into the “queue” on a first come – first served basis and each project must go through a series of studies that assess the technical feasibility of connecting to the grid and the associated costs.<sup>5</sup> There is now a meaningful history of project development that can be derived from the New England, New York and PJM interconnection queues. Using the available data in the queue, the overall performance of projects in the queue moving to completion can be calculated<sup>6</sup>; this performance is defined as the “probability of completion”. Projects fail to move to completion for a large number of reasons. The obstacles include failure to obtain necessary permits, local opposition, poor economics, merchant risks, and lack of financing amongst others.

In New England, the overall probability of completion performance based upon this metric is slightly below 20 percent. In its 2008 Regional System Plan<sup>7</sup>, ISO-NE provided a summary of the interconnection queue performance from its inception in 1997 through March 2008. Based upon the number of projects actually completed, not total MWs, the probability of completion is 17.7 percent (47 projects against 265 interconnection applications).

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<sup>5</sup> ISO-NE is undergoing queue reform and some change is expected to the rules, including higher costs for interconnection studies.

<sup>6</sup> A straightforward way to assess the overall probability of completion is to compare the total number (or MWs) of projects completed to the total number of projects withdrawn from the queue over a long period of time. A simple formula to calculate this probability of completion is shown below:

$$\text{POC \%} = \frac{\text{OP} + \text{UC}}{\text{TA}} \times 100 ,$$

Where,

OP = Operating, MW

UC = Under Construction, MW

TA = Total of Generator Interconnection Applications, MW

In PJM, the interconnection queue has been split into periods of six months, where applications in each six month period are assigned a queue letter. For example, Queue F represents project applications submitted from end-January 2000 to end-July. For Queues A through N, representing all projects from before 1999 and through 2005, the project probability of completion was 13 percent. The total MWs of projects withdrawn from the queue during that period represents 84 percent of the total. This leaves a very small percentage projects from these queues that might still considered active, but at this point are unlikely to proceed. When taking all the PJM queues into account (A through U), the probability of completion drops to 10 percent. Using the A through N queues provides a more accurate picture because most projects are either completed or withdrawn and are no longer active.

ESAI’s assessment of the New York queue requires an assessment of ‘inactive’ projects – projects that have not withdrawn but are most certainly not under any active development are likely to withdraw. Based on the metric above, the New York probability of completion is 10.0 percent.

<sup>7</sup> ISO New England, “2008 Regional System Plan”, October 16, 2008, p. 50  
[http://www.iso-ne.com/trans/rsp/2008/rsp08\\_final\\_101608\\_public\\_version.pdf](http://www.iso-ne.com/trans/rsp/2008/rsp08_final_101608_public_version.pdf)

## The New England Probability of Completion Assumptions

For the forward queue analysis in New England, ESAI applies a probability of completion assumption of 20 percent to all projects in the queue that have not yet commenced construction and are under active development. This percentage is slightly higher than performance noted in PJM and New York. The PJM queue history reflects a probability of completion of 16 percent or lower; New York's queue has a 10 percent probability of completion (see footnote 7).

As a further refinement, projects that have cleared in the first two FCM auctions (for 2010/11 and 2011/12) are given a 100 percent probability of completion due to their commitments to be on-line by June 2010. Projects that have qualified for the third FCM auction, for the 2012/13 capacity year, are given a 40-50 percent probability of completion. These projects may not clear in the auction, but have cleared many of the major permitting and interconnection hurdles. As mentioned earlier, Cape Wind has not qualified for the FCM auctions, but is given a 100 percent chance of completion due to its position in the permitting process and other factors, such as its location in Massachusetts that should give it some development advantages due to considerations under the Green Communities Act, particularly upcoming RFPs.

Projects that are in the queue but have no real chance of further development (or are known as essentially abandoned) are given a probability of completion equal to zero. For example, some of the larger Aroostock county wind projects have been shelved due to the lack of interest in developing transmission from the electrically isolated Aroostock county into NEPOOL.

Renewable projects, particularly wind projects, face the same obstacles noted above for traditional generators. In addition, there are additional challenges to wind projects in the siting and permitting process, including "NIMBYism". The number of sites is somewhat limited by the minimum wind speed requirements and these sites are often located on environmentally sensitive mountain ridges and other sensitive areas. The local opposition to the Cape Wind construction in Nantucket Sound is an interesting example of the challenges faced by wind developers. Wind developers also face the challenges of obtaining turbines on a timely and cost-effective basis as well as the constantly shifting long term outlook for energy prices that directly impact wind farm economics. Given the additional challenges faced by wind developers, the application of a 20 percent probability of completion for wind projects under development appears prudent.

## **A Look At the Current New England Queues**

Table 2 provides an overview of the current New England queues for renewable resources. The queue capacity is broken out by the expected year of project completion. Each project in the queue is assigned a probability of completion consistent with the status of each project as outlined above. The first column expresses the total renewable capacity in the queue for the expected year of completion. The second column provides the total expected capacity that will eventually be constructed based on the sum of the total net capacity after the individual project probabilities of completion are applied.

The implied probabilities of completion as shown in Table 2 are high, particularly in 2012 and 2014. This is due primarily to the assessment of two large projects at 100 percent probability of completion; Cape Wind at 300 MW and Deepwater Wind at 347 MW (basis the queue registration). The Cape Wind project is assumed to come in during 2012 as a result of the Massachusetts RFPs for renewable energy. The Deepwater project is assumed to be complete at the end of 2013 and is therefore included as a 2014 project. The expected capacity factor of the Deepwater project is 37 percent; higher than the 25 percent assumed for land-based projects. For this reason, the 347 MW Deepwater project has a land based wind-equivalent of 514 MW. *The expected completion of the Deepwater Wind project is a base assumption of this study of Rhode Island renewable energy.*

Cape Wind has had a very long development history and has encountered many obstacles along the way. While the final outcome is unclear, Cape Wind or a project like it is required to meet renewable energy needs in New England in 2012. The Massachusetts RFP for renewable energy will attract additional new generation and if Cape Wind is not selected, then other new projects will fill this gap and our analysis assumption on the supply side should still be valid.

<b>Table 2 - ISONE Renewable Queue Capacity Vs. Expected Capacity</b>		
<b>Online Year</b>	<b>Nameplate Queue Capacity, MW</b>	<b>Net Expected Capacity After Probability, MW</b>
<b>2010</b>	1018	412
<b>2011</b>	1193	311
<b>2012</b>	1244	564
<b>2013</b>	578	26
<b>2014</b>	514	514
<b>TOTAL</b>	<b>5,080</b>	<b>1,826</b>
<b>Average/Year</b>	<b>909</b>	<b>365</b>

In its forward assessment of supply, ESAI uses the net capacity after probability shown in the yellow column in Table 2 to determine new renewable energy supplies in each year. Additional queue details are provided in the Appendix.

### **Forward Supply Analysis**

Table 2 above shows that the average total renewable queue capacity in each year is 909 MW and the average expected completion is 365 MW per year. Given several factors outlined below, ESAI makes an assumption that 1,750 MW per year of wind-equivalent renewables will enter the queue and that 350 MW or 20 percent of these will be completed each year. Defining factors are:

- 1) Increasing trend of renewable capacity development already evident
- 2) Higher Alternative Compliance Payments will drive additional development
- 3) Other state RPS initiatives will drive investment and development
- 4) The state directives that LSEs issue RFPs for the purchase of renewable energy under long term contract

### **Visibility in the Queue Through 2011**

There is adequate transparency in the queues through 2012. This is primarily due to the requirement that resources that wish to offer into the 2012/13 FCM capacity auction have already been pre-qualified (auction takes place in December 2009). Those resources that have qualified for the auction were given a 40-50 percent completion probability and other non-qualified resources were generally given a 20 percent 'in-development' probability. For 2010 to 2014, the expected "net capacity after probability" numbers shown in Table 2 are used in the supply forecast; 435 MW for 2010 and 283 MW for 2011.

There are 256 MW of wind equivalent resources in the queue that have qualified for the 2012/13 FCM auction (including biomass and landfill gas projects). At ESAI's 40 percent completion assessment we would expect 102 MW to clear in the auction, some of which will have completed construction prior to June 2012.

### **New Resource Additions 2012 to 2020**

Beyond 2012, we expect a significant increase in project completions on an annual basis to an average of 350 MW per year of wind equivalent resources. This is roughly equivalent to the pace of renewable resources expected to be completed in 2010 and 2011.

It is likely that the 2013 and 2014 queues will expand, however, we expect that some of the resources expected in earlier years will shift to 2013 and 2014 due to normal delays.

350 MW of wind-equivalent resources will produce 766,500 MWh of renewable energy per year with each MWh representing one Renewable Energy Credit. This is roughly equivalent to one half of the required annual increase for New England as a whole.

## ***The New England Supply/Demand Balance***

### **Rhode Island Competes In a Renewable Marketplace**

Rhode Island is one of five New England states with renewable energy requirements. Each of the other states has similar non-compliance penalties or ACPs. The ACPs in Rhode Island, Massachusetts, Maine and New Hampshire are equivalent at \$60.92/MWh (basis 2009) and escalate equally with the consumer price index, CPI. The Connecticut ACP is \$55.00/MWh but at present does not escalate with the CPI.

Because longer term RECs are typically traded at a significant discount to ACP, it is clear that all of these states will compete equally for available RECs. (Buyers will not want to commit to the non-compliance penalty on a long term basis. Long term REC values have been trading in the \$30-40/MWh range.)

Because Rhode Island co-exists in a competitive New England marketplace with other states who can compete equally, ESAI assigns available supply on a pro-rated basis across the states. As noted in an earlier chart with a breakdown of the NE REC requirements, the 2009 Rhode Island requirement represents 6 percent of the total pool requirement with Massachusetts having the largest share at 46 percent and Connecticut close behind at 42 percent. Prior to 2012, when Rhode Island's renewable energy balance is in a deficit position, Rhode Island buyers will pay equivalent prices to the other state competitors, perhaps with continuation of the slight premium experienced relative to Massachusetts.

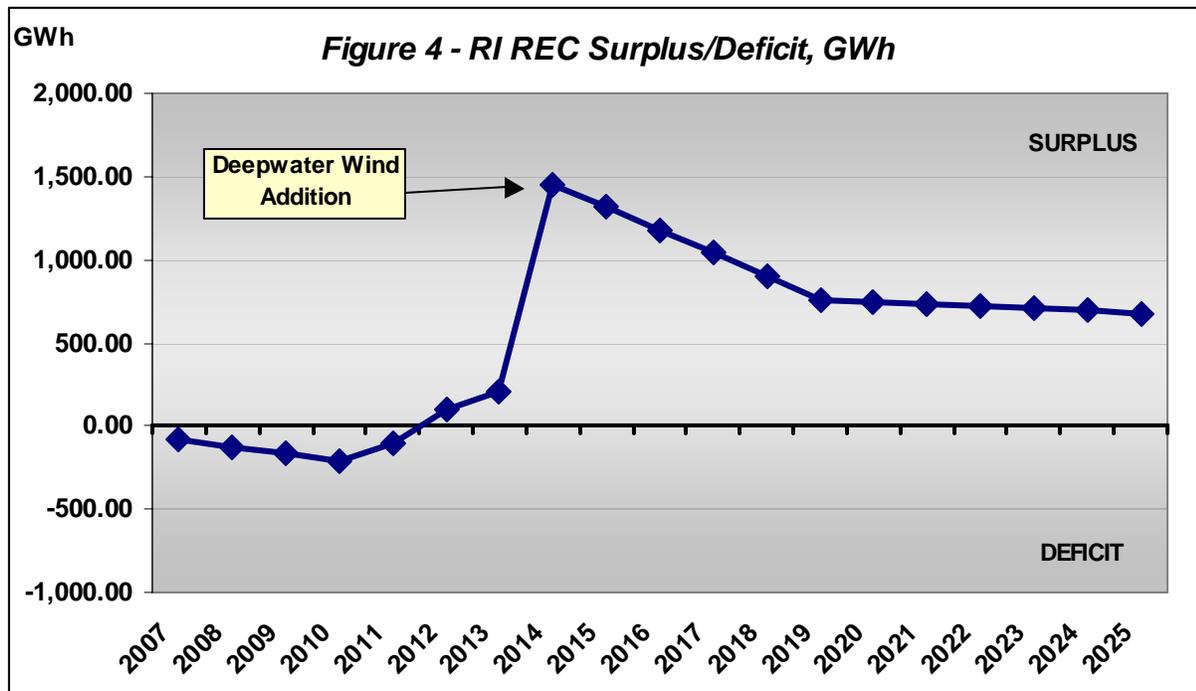
### **Rhode Island Supply/Demand Balance**

Under recently enacted legislation, Rhode Island distribution companies will be securing renewable energy from in-state resources through the issuance of RFPs. The first 90 MW of capacity will be purchased over 4 years starting in 2010 according to the schedule below;

22.5 MW	December 2010
22.5 MW	December 2011
22.5 MW	December 2012
22.5 MW	December 2013

In addition to the capacity above, ESAI assumes that the Block Island 30 MW of capacity will come on line in 2011 and that the 350 MW Deepwater project will come on line at the end of 2013 and is counted as available in 2014. (The Deepwater project is listed in the queue as 347 MW but is likely to be 375 MW.)

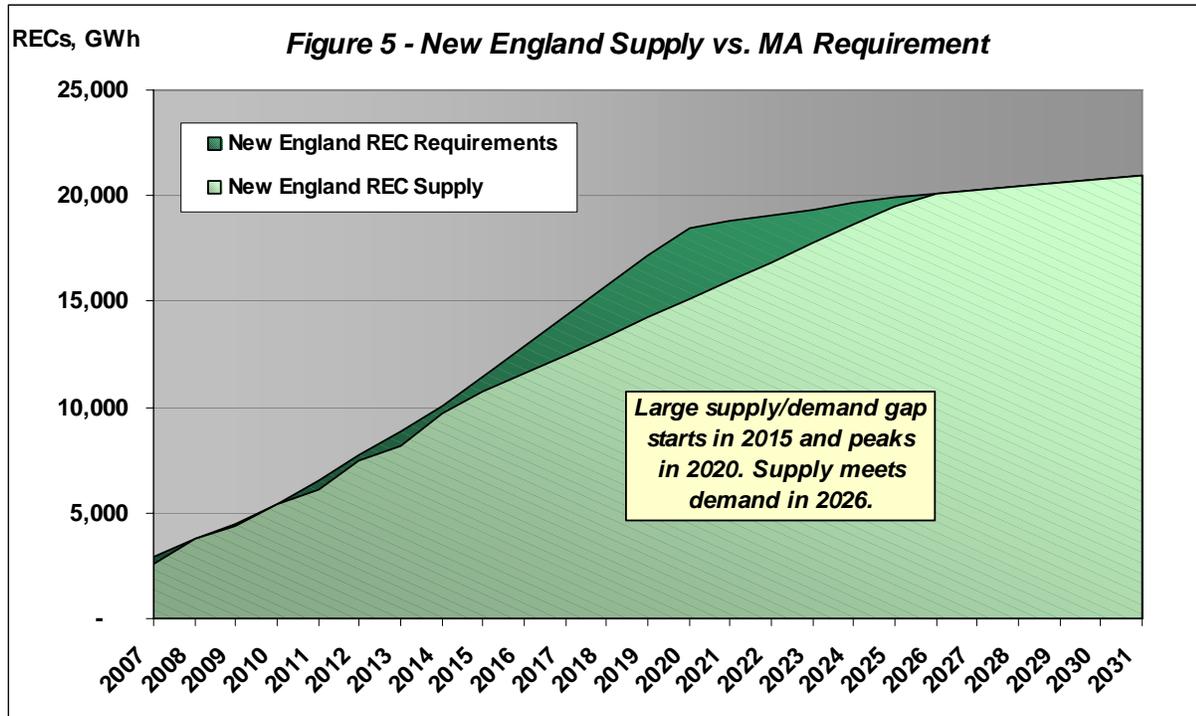
Because the Rhode Island total load and resulting renewable energy requirements are fairly small, the 22.5 MW additions plus the Block Island addition result in the Rhode Island supply/demand balance moving from deficit to surplus in 2012 (see Figure 4). The addition of the Deepwater capacity would assure that Rhode Island would be in a surplus renewable energy position beyond 2030.



**The New England Balance**

In 2009 and 2010, the New England REC supply and demand is likely to be very close to balanced. From 2010 to 2014, new capacity additions should come close to keeping up with increases in New England REC demand. Beyond 2014, a supply gap will develop that will widen slowly as new REC supply additions are outpaced by the accelerating demand. By 2020, the New England REC shortfall would be close to 3.4 million MWh.

Figure 5 shows the widening gap between supply and demand beyond 2015. This gap is defined by the current demand growth scenario assuming load growth at 0.8 percent and new wind equivalent resources of 350 MW per year on average. In order to meet the New England RPS goals, almost 600 MW of new wind-equivalent resources (1,314,000 MWhs) should be added each year. This is an additional 250 MW above the 350 MW ESAI assumes would get built under the expected pace of development. ESAI believes that the assumption of 350 MW of renewable additions each year to the New England market is optimistic and that adding a total of 600 MW per year would require a very aggressive and coordinated renewables program. Without new transmission infrastructure to enable development in areas where wind resources are most abundant, it will be difficult to achieve full compliance with new resources by 2020. A significant increase in imports would also require upgrades to the transmission system.



## ***Rhode Island REC Price Forecast***

As noted previously, the Rhode Island REC prices will be determined in the context of the overall New England marketplace. Until 2011, Rhode Island will compete to purchase RECs against its shortfall of local production. From 2012 and beyond, Rhode Island will have surplus RECs due to its assumed commitment to purchasing renewable energy from in-state suppliers. The surplus RECs will be sold into the New England marketplace and will receive value based upon the supply-demand balance of the New England REC market.

Prices for the 2009 and 2010 compliance periods should remain near current levels. The emerging deficit in 2011 will cause prices to increase while the addition of Deepwater Wind in 2014 will drop prices temporarily. From 2015 to 2020, REC prices will climb due to the widening supply/demand gap.

It is important to note that ESAI does not assume that prices will reach ACP just because the market is deficit in the supply/demand balance. REC buyers will request discounts from ACP when they negotiate in the marketplace. If buyers cannot get a discount from ACP, then they will just wait and pay ACP at a later date when they cannot show full compliance with purchased RECs. The amount of discount is relative to the expected shortfall for that compliance year.

ESAI's REC price forecast has been provided to National Grid under separate cover along with the relevant energy and capacity price forecasts.

## ***Facilitators to Renewable Energy Growth in New England***

Renewable energy projects rely largely on developing and emerging technologies that can be expensive relative to traditional forms electricity generation. To overcome the economics associated with higher costs and the intermittent nature of wind and solar resources, a number of specific policies have been put in place that provide incentives to renewable developers. Other policies such as those aimed at emissions reductions will also provide economic benefits to renewable developers. These facilitators to project development are outlined below.

- 1) ***High ACP Prices*** - ACPs are high in New England and are likely to stay high over the next ten years. This provides a backdrop for developers to gain higher prices for long term REC contracts and is supportive of new development.
- 2) ***ACP Redeployment*** - Funds received as Alternative Compliance Payments will go to the Mass Technology Collaborative and the Renewable Energy Trust where funds will be redirected back into renewable project development. This will help to get many new projects off the ground.
- 3) ***Massachusetts Green Communities Act*** – In-state promotion of renewables and other state government support represent significant initiatives in the Green Communities Act. Massachusetts utilities will be required to provide long term contracts for renewable energy supplies. Long term contracts will be a vital component of any package that developers present to lenders for financing. Merchant projects will be much more difficult to finance for the foreseeable future.
- 4) ***Production Tax Credit*** – As part of the recent federal bailout package, production tax credits were extended 8 years for the solar industry and 1 year for the wind industry. This provides a continued stimulus for the wind and solar renewable sectors.
- 5) ***Carbon Mitigation & Emissions*** – The introduction of carbon cap and trade under RGGI (the Regional Greenhouse Gas Initiative) or an alternative Federal program will add a carbon cost component to the cost of conventional power production. As this cost increases, the marginal cost of electricity in the wholesale markets will increase. Renewable power sources will have little or no carbon costs and will directly benefit from any increases in carbon costs that result in higher electricity costs. This added revenue could become very significant under a federal carbon program that imposes strict carbon emission standards. Higher costs for NO<sub>x</sub>, SO<sub>x</sub> and mercury mitigation for traditional generators will also result in higher electricity costs and provide economic benefits to renewable energy resources that do not have these emissions costs.
- 6) ***Wind Development Areas*** – In April 2008, the state of Maine enacted legislation to expedite wind farm development under “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development”. Specifically, the Act sets out a goal of 3,000 MW of new wind capacity to be built in Maine by 2020. Under the Act, the permitting process will be streamlined for projected developed in designated expedited development areas. These areas are quite extensive and cover major portions of the State of Maine. Access to suitable take-away transmission capacity is limited.

- 7) **Import Qualifications** – The Massachusetts requirement for FCM qualified imports has been dropped as a result of the reviews and comments as part of the rulemaking process. Imports are not required to clear the Forward Capacity Markets in order to meet Massachusetts RPS eligibility. This clears a potential hurdle for renewable energy imported from outside of New England.
- 8) **Net Metering** – Promotes smaller on-site or distributed renewable energy production by allowing net sales to the grid. Wind towers up to 60 kW and solar up to 2 MW will qualify for net metering.

### ***Impediments to Renewable Energy Growth In New England***

The development of a generation project is a lengthy and tedious process that requires an organization with access to significant expertise in many areas including siting, environmental permitting, technology, transmission, plant economics, and financing. Renewable energy projects such as wind farms encounter the same issues and can face additional difficulties that do not necessarily plague traditional generation developers. The following issues are particularly relevant to wind project developers and provide potential hindrances to the progress of developing projects.

- 1) **Energy Price Uncertainty** - A high fuel price environment has a directly positive impact on the economics of most renewable energy projects, especially wind. Under a high fuel price environment, developers are able to make long term contracts for their energy at high fixed prices. For wind developers, the fuel – wind – is free and any increases to their energy sales price goes straight to the bottom line. As fuel prices come down, wind project economics are less attractive.

High natural gas prices provided a very positive outlook for renewable development during the Spring of 2008. From April to July 2008, natural gas prices were at \$12.00/MMBtu or higher, providing a strong underpinning for the high energy prices needed to support renewables.

The current outlook is for \$5-8 gas for the next several years. This is due to a number of factors including lower demand, abundant shale gas production, global LNG production hitting stride in the 2010-12 time frame and increased access to natural gas from the Rockies region due to new west to east pipeline capacity. Lower natural gas prices will result in lower electricity prices and will tend to make wind projects less profitable and more difficult to finance than under a high gas price scenario.

- 2) **New England Capacity Prices** - New England conducted its first Forward Capacity Market (FCM) auction in early 2008. Prices cleared at the floor of \$4.50/kw-mo, well below the requirements for new traditional gas-based capacity (combined cycle). The first auction cleared a surplus of approximately 2,000 MW; this surplus will add to pricing pressure in future auctions. The second FCM auction cleared with even further additions to the surplus. ESAI expects depressed capacity pricing conditions through 2018 and even beyond. Capacity payments play a relatively small role in wind farm revenue streams, but are more significant for higher capacity factor biomass or landfill gas projects.

- 3) **NIMBY Issues** - Although typically associated with traditional power plants, NIMBY issues are also arising with wind projects. Most projects must overcome concerns and objections over visibility issues, noise and the traffic associated with the construction and maintenance of the wind towers and turbines.
- 4) **Limited Transmission Take-away Capacity** - The base New England infrastructure is not currently capable of handling high volumes of power generated from renewable sources in all areas. Significant limitations would be experienced in Maine under existing conditions. The Maine limitations will be addressed to some extent if the Maine Power Reliability Project is approved and constructed.
- 5) **Deliverability Issues** - Due to limited transmission, it is possible that renewable energy production could be curtailed to preserve the integrity of grid operations. One example is curtailment at the Maple Ridge wind farm in upstate New York – a Massachusetts eligible resource. This facility has experienced curtailments and significant price discounts due to congestion on transmission lines that are inadequately sized to handle all of the power that can be potentially delivered from that area.<sup>8</sup>
- 6) **Access to Transmission – Long Generator Leads** - Wind farms are often located significant distances from existing transmission lines. Some developers may be able to afford long generator leads as part of their overall project costs, others may not.
- 7) **Siting – Best Sites Taken Early** - As projects get built, new sites are harder to find and possibly more difficult to permit. The choice spots go first, the more difficult sites are left for later development.
- 8) **Financing** - The current credit environment makes debt financing much more difficult, particularly for merchant projects. Some project developers have been forced to shutdown or scale back projects under late stage development or even construction. One major developer, Noble Environmental Power, is curtailing construction or development of about half of its projects as a result of the credit crisis.  
  
Long term power purchase agreements will be needed to finance most projects. Many projects will require energy prices that are above market and high REC prices. Some entities may be willing to pay higher prices to support development, others may not. Most buyers will be hoping to buy long term RECs at substantial discounts to the annual ACP levels.  
  
Offshore costs are much higher and would require contract energy prices that would be significantly above market. Energy, capacity and REC prices in some combination would need to be above market to meet higher cash flow needs.
- 9) **Tax Credit Values Are Volatile** - Renewable projects often generate tax credits that are more valuable to other entities. Developers have been able to take advantage of this by ‘selling’ their tax credits to enhance the economics of the project. Due to the recent financial crisis, the market’s appetite for tax credits has also contracted significantly and reduces the opportunity for this economic enhancement.
- 10) **Intermittent Resources & System Integration** – The power system can accommodate a fairly high level of intermittent resources. However, the full amount of

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<sup>8</sup> Matthew Wald, “Wind Energy Bumps Into Power Grid’s Limits”, [New York Times](#), August 27, 2008.

intermittent resources that can be managed effectively on the system is unknown. As more wind resources enter the system over time, it may become more difficult or more costly to interconnect incremental wind resources to the system.

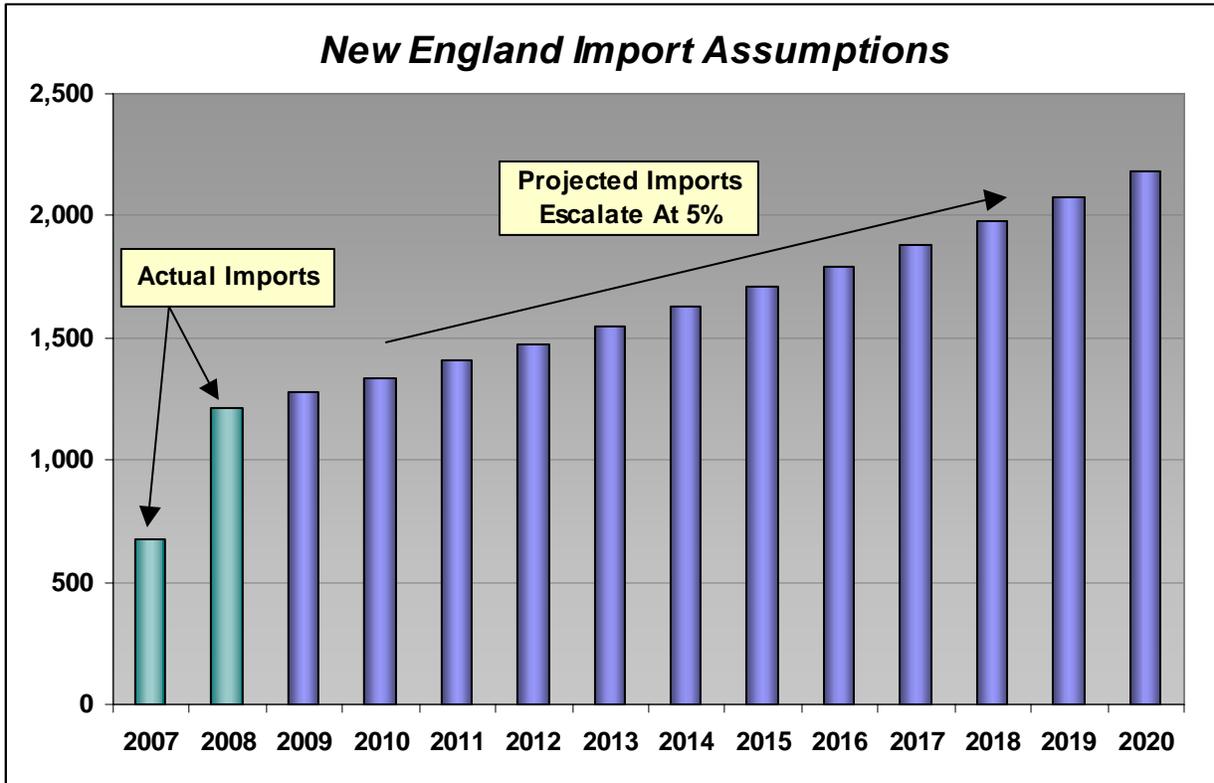
- 11) ***Biomass Fuel Availability*** - There is significant potential for biomass capacity additions in New England, however, there is a limit to the amount of wood based biomass fuel that will be available for new projects. Recent studies for a proposed biomass plant in Coos County, New Hampshire<sup>9</sup> indicate that it is questionable whether enough biomass is available locally without longer haul imports to the facility. Each incremental biomass facility that gets built will add strain to the regional market for wood based biomass, eventually driving competition and higher prices.
- 12) ***Regulatory Uncertainty*** – The uncertainty associated with the production tax credits for wind energy production is another difficulty in the development of new wind facilities. The production tax credit is a key component of the revenues streams that make many wind projects economically feasible. Without this tax credit, many projects would not move forward. There are many other regulatory risks that developers must face including the possibility of changes in the renewable portfolio standards themselves or changes in the ISO market rules that could adversely impact project economics.

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<sup>9</sup> Relevant studies can be found at <http://www.puc.state.nh.us/TransmissionCommission.htm> . “Clean Power Development – Biomass Fuel Availability”; “Innovative Natural Resources Solutions, Inc. – Presentation on Biomass Fuel Availability In Berlin, NH”; “Landvest Inc. Presentation on Wood Supply Study For Coos County”.

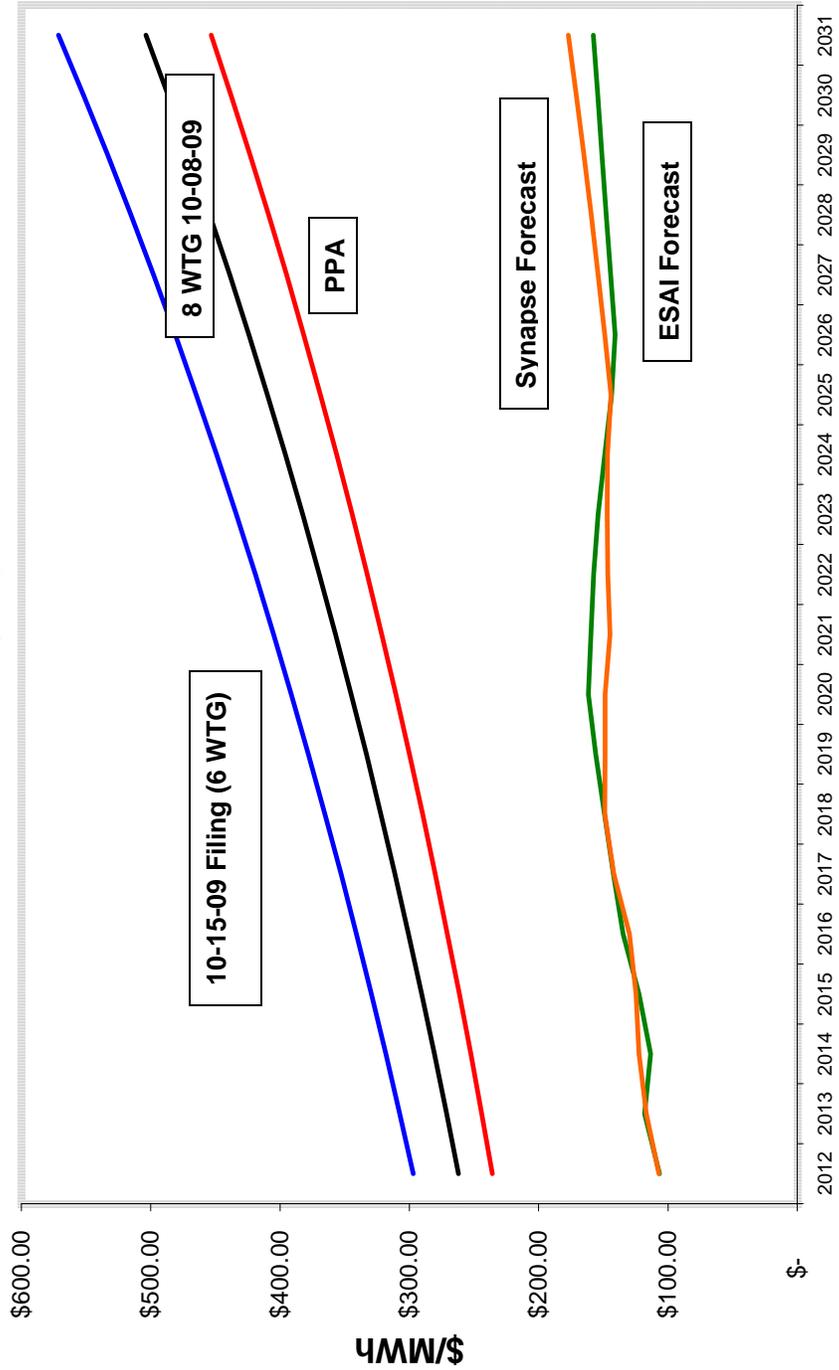
## APPENDIX

<i>ESAI New England Queue Assumptions</i>							
Facility Name	State	Source	Capacity	1st Full Year of Operation	Probability of Completion	Expected Generation, GWH	
Kibby Wind Farm	ME	Wind	65.5	2010	100%	143	
Wind Project	ME	Wind	75	2010	40%	66	
Sheffield Wind	VT	Wind	40	2010	60%	53	
Grandpa's Knob Wind	VT	Wind	75	2010	20%	33	
Wind	ME	Wind	148	2010	10%	32	
Wind	ME	Wind	19.5	2010	10%	4	
Wind	NH	Wind	50	2010	10%	11	
Wind Project	VT	Wind	30	2010	10%	7	
Wind Project-Phase 1(MPS Queue # 6)	N/A	Wind	300	2010	10%	66	
Biomass Project	NH	Biomass	45	2010	30%	101	
Biomass Project ( Also see queue	MA	Biomass	41	2010	20%	61	
Increase to biomass project in queue	MA	Biomass	20.5	2010	20%	31	
Steam Turbine	NH	Biomass	16.5	2010	20%	25	
Biomass Project	NH	Biomass	10	2010	20%	15	
Rhode Island Landfill Gas Project	RI	LFG	36.1	2010	50%	134	
Rhode Island Landfill Gas Project	RI	LFG	45.9	2010	50%	171	
Watertown Renewable Power	CT	Biomass	26.25	2011	50%	98	
Wind - Block Island	RI	Wind	30	2011	100%	66	
Hoosac Wind Project	MA	Wind	30	2011	20%	13	
Granite Reliable Power Windpark	NH	Wind	100	2011	30%	66	
Fraser Paper	NH	Biomass	61	2011	20%	91	
Plainfield Renewable Energy Project	CT	Biomass	37.5	2011	40%	112	
Wind (upgrade to 266) - Orleans	VT	Wind	8.5	2011	0%	0	
Wind - Aroostook	ME	Wind	150	2011	0%	0	
Wind - Aroostook	ME	Wind	150	2011	0%	0	
Wind - Aroostook	ME	Wind	150	2011	20%	66	
Brodie Mountain (Berkshire Wind)	MA	Wind	15	2011	100%	33	
Wind Project-Phase 3( MPS Queue # 4)	N/A	Wind	250	2011	0%	0	
Russell Biomass	MA	Biomass	55	2011	0%	0	
Biomass Project	NH	Biomass	41	2011	15%	46	
Biomass Project	NH	Biomass	50	2011	15%	56	
East Springfield Biomass	MA	Biomass	35	2011	0%	0	
Cape Wind	MA	Wind	300	2012	100%	920	
Stetson Mountain Wind	ME	Wind	39	2012	100%	85	
Rollins Mountain Wind Farm	ME	Wind	78	2012	35%	60	
Wind - Aroostook	ME	Wind	64	2012	0%	0	
Wind - Aroostook	ME	Wind	95	2012	0%	0	
Fitchburg Wind	MA	Wind	12	2012	20%	5	
East Haven Wind Farm	VT	Wind	6	2012	5%	1	
Wind Project-Phase 2( MPS Queue #	N/A	Wind	250	2012	30%	164	
Wind Project-Phase 4( MPS Queue # 8)	N/A	Wind	250	2012	0%	0	
Wind Project-Phase 5( MPS Queue # 9)	N/A	Wind	150	2012	0%	0	
Wind	RI	Wind	450	2013	0%	0	
Wind	ME	Wind	128	2013	20%	56	
Deepwater Wind	RI	Wind	347	2014	100%	1,125	





### Deepwater Pricing for Bundled Energy vs ESAI and Synapse Forecasts





## **Exhibit 8**

**See Separate Volume**



## Estimated Above Market Cost for 20-year PPA Hypothetical Comparison with Competitive Solicitation

	8 WTG 28.8 MW 12/09/2009 PPA				Competitive Solicitation	
	Statutory Capacity 11.5 MW				90 MW	
	Annual Output 100915 MWh				788400 MWh	
	Above Market Cost				Above Market Cost	
	Unit Pricing	Contract Cost	ESAI 7x24 Pricing	Synapse Seasonal Pricing	Contract Cost	ESAI 7x24 Pricing
2009	\$ 212.63					
2010						
2011						
2012	\$ 235.75	\$ 4,163,286	\$ 1,934,724	\$ 2,382,577		
2013	\$ 244.00	\$ 24,623,040	\$ 12,377,137	\$ 12,602,541	\$ 192,367,878	\$ 98,838,128
2014	\$ 252.54	\$ 25,484,846	\$ 13,731,626	\$ 12,870,799	\$ 199,100,754	\$ 109,480,800
2015	\$ 261.38	\$ 26,376,816	\$ 13,725,001	\$ 13,521,199	\$ 206,069,280	\$ 109,296,907
2016	\$ 270.52	\$ 27,300,004	\$ 13,418,825	\$ 13,950,993	\$ 213,281,705	\$ 106,780,695
2017	\$ 279.99	\$ 28,255,504	\$ 13,620,891	\$ 13,686,589	\$ 220,746,564	\$ 108,242,586
2018	\$ 289.79	\$ 29,244,447	\$ 13,948,124	\$ 13,938,274	\$ 228,472,694	\$ 110,689,348
2019	\$ 299.94	\$ 30,268,003	\$ 14,302,924	\$ 14,982,145	\$ 236,469,238	\$ 113,358,061
2020	\$ 310.43	\$ 31,327,383	\$ 14,804,580	\$ 16,050,996	\$ 244,745,662	\$ 117,180,282
2021	\$ 321.30	\$ 32,423,841	\$ 15,978,725	\$ 17,545,645	\$ 253,311,760	\$ 127,181,155
2022	\$ 332.54	\$ 33,558,675	\$ 17,059,630	\$ 18,486,632	\$ 262,177,672	\$ 137,398,832
2023	\$ 344.18	\$ 34,733,229	\$ 18,356,944	\$ 19,609,889	\$ 271,353,890	\$ 149,093,728
2024	\$ 356.23	\$ 35,948,892	\$ 19,998,948	\$ 20,802,606	\$ 280,851,276	\$ 162,555,912
2025	\$ 368.70	\$ 37,207,103	\$ 21,765,986	\$ 22,328,570	\$ 290,681,071	\$ 176,550,332
2026	\$ 381.60	\$ 38,509,352	\$ 23,318,612	\$ 23,134,511	\$ 300,854,908	\$ 188,875,348
2027	\$ 394.96	\$ 39,857,179	\$ 24,290,747	\$ 23,961,129	\$ 311,384,830	\$ 196,671,114
2028	\$ 408.78	\$ 41,252,181	\$ 25,309,776	\$ 24,808,985	\$ 322,283,299	\$ 204,839,273
2029	\$ 423.09	\$ 42,696,007	\$ 26,378,181	\$ 25,677,636	\$ 333,563,215	\$ 213,399,394
2030	\$ 437.90	\$ 44,190,367	\$ 27,498,586	\$ 26,567,664	\$ 345,237,927	\$ 222,372,161
2031	\$ 453.22	\$ 45,737,030	\$ 28,693,036	\$ 27,480,672	\$ 357,321,255	\$ 231,798,709
2032	\$ 469.09	\$ 47,337,826	\$ 29,946,727	\$ 28,417,262	\$ 369,827,499	\$ 241,593,193
Sum		\$ 700,495,011	\$ 390,459,730	\$ 392,807,313	\$ 5,440,102,376	\$ 3,126,195,960
NPV @ 7%		\$ 323,300,561	\$ 173,871,638	\$ 176,217,468	\$ 2,670,070,245	\$ 1,477,494,429