

REQUEST FOR PROPOSALS

FOR

**LONG-TERM CONTRACTS FOR
RENEWABLE ENERGY PROJECTS**

Issuance Date: January 15, 2010

Distribution Companies:

Fitchburg Gas & Electric Company d/b/a Unitil
Massachusetts Electric Company d/b/a National Grid
Nantucket Electric Company d/b/a National Grid
NSTAR Electric Company
Western Massachusetts Electric Company

Massachusetts Department of Energy Resources

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I. Introduction and Overview

1.1 Purpose of the Request for Proposals (“RFP”)

Fitchburg Gas & Electric Company d/b/a Unitil (“Unitil”), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (“National Grid”), NSTAR Electric Company, and Western Massachusetts Electric Company, as investor-owned electric distribution companies (collectively, “Distribution Companies” and each a “Distribution Company”) serving customers in the Commonwealth of Massachusetts, in consultation with the Massachusetts Department of Energy Resources (“DOER”), are collectively seeking proposals for the supply of electric energy and Renewable Energy Certificates (“RECs”) from Massachusetts-based renewable energy projects under long-term power purchase agreements (“PPAs” and individually a “PPA”) pursuant to Section 83 of the Green Communities Act of 2008 (“GCA”). In this Request for Proposals (“RFP”), the Distribution Companies are soliciting energy and RECs for approximately 1.5 percent of their annual load (approximately 0.75 million MWh) to be procured pursuant to PPAs with a duration of 10-15 years. The terms of the PPAs will be finalized between the Distribution Companies and successful bidders based on the bids submitted and selected in accordance with the process set forth in this RFP.¹ This RFP includes a Model Power Purchase Agreement (“Model PPA”), which will serve as the reference point for any bidder exceptions or counter-proposals.

The fundamental purpose of the RFP is to satisfy the policy directives encompassed within Section 83 of the GCA, which require the Distribution Companies in consultation with DOER to (1) solicit proposals from developers of Massachusetts-based renewable energy projects (including adjacent federal waters) in a reasonable fashion, and (2) execute long-term PPAs in order to facilitate the development, financing, construction and operation of these projects. The standards and criteria set forth in this RFP are designed so that the proposals selected for contract negotiations will serve the interests of Section 83 of the GCA by furthering those projects that have a strong likelihood of being financed and constructed and that will provide a cost-effective source of long-term renewable energy supply to the Commonwealth.

In addition to the statutory requirements set forth in Section 83 of the GCA, the Distribution Companies are issuing this RFP in accordance with regulations promulgated under the GCA by the Massachusetts Department of Public Utilities (“MDPU”) and DOER. This RFP outlines the process that the Distribution Companies plan to follow to satisfy their obligations regarding the first of two solicitations required under Section 83 of the GCA and applicable regulations; sets forth timetables regarding the solicitation process; provides information and instructions to prospective bidders, and

¹ The actual amount of electric energy and RECs to be procured under this RFP will depend on the Distribution Companies’ assessment of the bids submitted. The amount of energy and RECs procured may reach 3 percent of Distribution Companies’ load (approximately 1.5 million MWh/year) over two or more RFP processes. For purposes of this RFP, three percent of distribution company load for each of the Distribution Companies based on 2008 data is as follows:

- National Grid: 655,898 MWh/year
- NSTAR Electric Company: 642,882 MWh/year
- Unitil: 14,398 MWh/year
- Western Massachusetts Electric Company: 108,468 MWh/year

describes the bid-evaluation process that will be followed once bids are received. For purposes of this RFP, DOER and the Distribution Companies are referred to collectively as the “Soliciting Participants.”

1.2 Statutory Framework Established by Section 83 of the Green Communities Act

Section 83 of the GCA requires each Distribution Company to solicit proposals from renewable energy developers at least twice during a five-year period commencing on July 1, 2009. The Distribution Companies are not obligated to enter into long-term PPAs under Section 83, to the extent that, in the aggregate, the contract volumes would exceed 3 percent of the total energy demand from all distribution customers in the service territory of the Distribution Company. Assuming that reasonable proposals have been received, each Distribution Company is required to enter into cost-effective long-term PPAs to facilitate the financing of renewable energy generation within the jurisdictional boundaries of the Commonwealth, including state waters, or in adjacent federal waters. The Distribution Companies are required to develop a timetable and method for solicitation and execution of long-term PPAs under Section 83 of the GCA in consultation with DOER, and subject to review and approval by the MDPU.

The long-term contracting obligation established by Section 83 of the GCA is separate and distinct from the Distribution Companies’ obligation to meet applicable annual renewable portfolio standards (“RPS”) requirements pursuant to Section 11F of Chapter 25A of the General Laws. However, a requirement under Section 83 of the GCA is that the renewable-generation resource from which energy and/or RECs are procured under a long-term PPA must be eligible to participate in the RPS program and to sell RECs under the program, and a Distribution Company may use RECs purchased under such a long-term PPA to satisfy its RPS requirements.

Long-term PPAs are defined within Section 83 of the GCA as PPAs having a term of 10 to 15 years. A Distribution Company may decline to consider PPA proposals having terms and conditions that it determines would require the PPA obligation to place an unreasonable burden on the company’s balance sheet. All proposed PPAs are subject to the review and approval of the MDPU before becoming effective.

Consistent with the directives set forth in Section 83 of the GCA, MDPU has adopted regulations at 220 C.M.R. 17.00 et seq. requiring that long-term PPAs entered into by the Distribution Companies be made with renewable energy generation sources that:

- (a) Have a commercial operation date, as verified by DOER, on or after January 1, 2008;²
- (b) Are qualified by DOER as a RPS Class I Renewable Generation Unit pursuant to M.G.L. c. 25A, § 11F; and
- (c) Are determined by the MDPU to:
 - 1. Provide enhanced electricity reliability within the Commonwealth;

² The RFP and the Model PPA are generally focused on generating projects that have not yet achieved commercial operation. However, generating projects that are currently in commercial operation and otherwise satisfy the criteria in this RFP are also encouraged to submit bids.

2. Contribute to moderating system peak load requirements;
 3. Be cost effective to Massachusetts electric ratepayers over the term of the PPA;
and
 4. Create additional employment in the Commonwealth, where feasible.
- (d) Are a cost-effective mechanism for procuring renewable energy on a long-term basis.

As part of its approval process, the MDPU must take into consideration the Attorney General's recommendations, which must be submitted to the MDPU within 45 days following the filing of a proposed PPA with the MDPU. Section 83 of the GCA provides that the MDPU "shall take into consideration both the potential costs and benefits of such contracts, and shall approve a contract only upon a finding that it is a cost effective mechanism for procuring renewable energy on a long-term basis."

1.3 Procurement by Distribution Companies in Consultation with DOER

The Distribution Companies and DOER have agreed to collaborate on a DOER-administered solicitation process with respect to the first of two solicitation processes required under Section 83.³ As a result of this collaborative process, the Distribution Companies, in consultation with DOER, have agreed to: (a) jointly issue this RFP, including associated bid forms and a Model PPA, (b) coordinate the receipt of bid proposals, and (c) establish a standardized framework for the evaluation of bids and the negotiation of PPAs. The purpose of this consolidated approach is to provide prospective bidders with a single set of bid submittal and evaluation requirements in order to simplify and facilitate the bidding process, as well as to provide a scale of potential procurement in a contemporaneous process, which would be difficult to achieve in separate procurement processes. Responses to the RFP will be returned to the Distribution Companies for evaluation and selection consistent with the terms of the RFP. Bidders may submit proposals contemporaneously to all of the Distribution Companies or to an individual Distribution Company, or to a subset of Distribution Companies.

DOER will serve in a consultative role to the Distribution Companies with respect to the bid evaluation up to and including development of a short list. The Distribution Companies will have the lead in bid selection, PPA negotiations and PPA execution. More specifically, the Distribution Companies (in consultation with DOER) will be responsible for evaluation of the bids pursuant to the evaluation criteria set forth in the RFP, bid selection, negotiation and contracting and the preparation and filing of executed PPAs with the MDPU for approval before they become effective. At such time that an executed PPA is proposed to the MDPU by a Distribution Company, DOER will submit its assessment of (a) the process followed by the Distribution Company resulting in the execution of the PPA, and (b) the merits of the particular PPA proposed for approval.

³ The Distribution Companies may, at their discretion, develop and implement more than two solicitation processes.

1.4 Procurement Process and Bid Evaluation Approach

The procurement process is designed to have three stages of evaluation, as described in Section 2.1 of the RFP. Initially, bids will be evaluated on the basis of whether certain eligibility and threshold requirements are satisfied. Eligibility requirements are designed to ensure that the bids under review offer the appropriate product and PPA tenor from qualifying renewable resources. Threshold requirements are designed to ensure that proposed projects satisfy statutory criteria under Section 83 of the GCA, and meet minimum standards for viability. In the second stage, bids will be evaluated in a technology-neutral manner based on specified price and non-price evaluation criteria. This portion of the bid evaluation will be quantitative in nature (*i.e.*, a quantitative scoring system will be utilized). Projects that pass the eligibility and threshold review and are scored favorably in the second stage of the evaluation process will advance to the final stage of the evaluation process. At this third stage of the process, further evaluation of the remaining bids will be conducted on matters pertaining to project viability and the extent to which the bids, individually and as a portfolio, achieve a variety of objectives, including cost effectiveness and diversity of resources. The Distribution Companies will select bids for PPA consideration from this pool. All three stages of the evaluation process, including the pertinent criteria, are described in Section II of this RFP.

1.5 Communications Between the Soliciting Parties and Bidders

With the exception of the pre-bid conference (see Section III, Paragraph 3.1 below), all pre-bid contact with prospective bidders and other interested parties will be via the Soliciting Participants' website, www.massachusettsrenewableenergyrfp.com. Links will be available for submitting questions to the Distribution Companies. DOER and its consultants will work with the Distribution Companies to coordinate responses, which will be posted on the Soliciting Participants' website. If a prospective bidder or other interested person has a question that is specifically directed to a particular Distribution Company, the question should be submitted via the same web link and the answers will also be posted on the website, as is the process for other questions.

Bids will be submitted directly to the Distribution Companies at the addresses set forth in Section III, Paragraph 3.5 of this RFP.

Following submission of bids, communications regarding specific bids will be between the Distribution Company (or Distribution Companies) and the bidder. It will be the responsibility of the bidders to keep the Distribution Companies informed about their bids. A bidder that has submitted a bid to multiple Distribution Companies will be responsible for providing information submitted to one Distribution Company (in response to an information request or request for clarification) to the other Distribution Company or Companies that were the recipient(s) of a bid for which the information or clarification is applicable. This responsibility is applicable until such time as such bidder has been notified that the bid has been shortlisted or not shortlisted.

1.6 RFP Process

The timeline for the bidding process following the issuance of this RFP, as well as the schedule for other steps in the process including approval by the MDPU, is set forth below at Section 3.1.

II. Bid Evaluation and Selection Criteria and Process

2.1 Overview of Bid Evaluation and Selection Process

Once bids are received by the Distribution Companies, the proposals will be subject to a consistent and defined review, evaluation and short-list selection process. The first stage consists of a review of whether the bids satisfy specified eligibility, threshold and other minimum requirements set forth in Section 2.2 of this RFP. The second stage consists of a combined price and non-price evaluation of bids that pass the first stage review, as described in Section 2.3 of this RFP. Bids that are selected for further review will enter a final stage of review which will involve additional risk assessment and consideration of the bids from a portfolio perspective consistent with the criteria set forth in Section 2.4 of this RFP. The selection of the short list will be made by the Distribution Companies in consultation with DOER.

Subsequent to the selection of the short list, the Distribution Companies will have the primary role in the conduct of any additional evaluation as deemed appropriate by each Distribution Company; selection of bids for contract negotiations; contract negotiations and/or finalization, and the filing of executed contracts for review and approval by the MDPU. During this stage of the process, DOER will maintain a consultative function. This post-short list selection stage of the process is described in Section 2.5 of this RFP.

2.2 Eligibility, Threshold and Other Minimum Requirements—Stage One of the Evaluation Process

2.2.1 Introduction

In order for a bid to qualify for detailed evaluation, it must satisfy certain requirements pursuant to this RFP. These requirements pertain to eligibility, a variety of threshold requirements and other requirements pertaining to participation in this RFP, including bidder certifications and allowable pricing. Following receipt of the bids, the bids will be reviewed to determine whether they satisfy these minimum requirements. Bids that do not satisfy these Stage One requirements may be disqualified from further review and evaluation.⁴ Stage One requirements are set forth in the following section of this RFP.

2.2.2 Eligibility Requirements

All proposals must meet the following eligibility requirements set forth below. Specifically, proposals will be considered from an Eligible Bidder with respect to Eligible Products generated from an Eligible Facility. The Eligible Products must be offered over the Allowable Contract Term in quantities that are equal or greater than the Minimum Contract Size. Failure to meet any of these requirements could lead to disqualification of the proposal from further review and evaluation.

⁴ The Soliciting Participants may conduct additional evaluation on bids at their discretion before the Stage One evaluation is completed.

2.2.2.1 Eligible Bidder

An Eligible Bidder is the owner of an Eligible Facility or the development rights to an Eligible Facility, i.e., the developer of the Eligible Facility.

2.2.2.2 Eligible Facility

An Eligible Facility must be an electric generation facility that satisfies each of the following standards:

- a. The electric generation facility must qualify as a RPS Class 1 Renewable Generation Unit under DOER's Class 1 Renewable Energy Portfolio Standard regulations, 225 CMR 14.01, *et seq.*
- b. The generation facility must either have a commercial operation date, as verified by DOER, on or after January 1, 2008 or represent a capacity expansion to an existing generation facility or a repowering of an existing generation facility that did not previously use an Eligible Class 1 Renewable Fuel (as defined in 225 CMR 14.02), where the capacity expansion or repowering has a commercial operation date on or after January 1, 2008. With respect to a capacity expansion or a repowering of an existing generating unit, only the energy and associated RECs (and capacity) associated with the incremental expansion or repowering shall be eligible for sale in this RFP.
- c. Pursuant to Section 83 of the GCA, the generation facility must be located "within the jurisdictional boundaries of the Commonwealth, including state waters, or in adjacent federal waters." Consistent with one of the criteria under Section 83 of the GCA—that a project "provide enhanced electricity reliability within the commonwealth"—a generation facility located in federal waters offshore of Massachusetts must have a transmission line that makes landfall within the jurisdictional boundaries of the Commonwealth.

2.2.2.3 Eligible Products

An Eligible Bidder may propose to sell electric energy and/or RECs from an Eligible Facility under a PPA. The structure of the contract will be both unit-specific and unit-contingent. The Model PPA (attached as Appendix C to this RFP) contains terms for the sale of both electric energy and RECs. Bids for the sale of capacity will also be considered. However, the Model PPA does not contain standard provisions for the sale of capacity. If a bid includes the sale of capacity, the bidder shall specify in accordance with the guidelines set forth in Section 2.2.4.2 of the RFP (footnote 11) and Section 15 of the Response Package the terms and conditions upon which the sale of capacity would be made to one or more of the Distribution Companies.

2.2.2.4 Allowable Contract Term

Consistent with Section 83 of the GCA, an Eligible Bidder may submit a proposal for the sale of Eligible Products from an Eligible Facility for a term of 10 to 15 years, at the bidder's discretion. For purposes of this RFP, the 10-15 year Allowable Contract Term begins on the Commercial Operation Date (as defined in the Model PPA) of the Eligible Facility.

2.2.2.5 Minimum Contract Size

The Minimum Contract Size is the proposed sale of Eligible Products from all or a portion of the net generating capability of an Eligible Facility at a specific site that is, at a minimum, one (1) MW. A bidder may bid the entire production of energy and RECs from its proposed Eligible Facility, or from any portion of its proposed Eligible Facility. Under this RFP, there is not a maximum contract size *per se*. However, the Distribution Companies may individually and collectively be constrained in light of their objectives to procure approximately 1.5 percent of their respective distribution loads in this RFP process.

2.2.3 Threshold Requirements

2.2.3.1 Introduction

Bids that meet all the Eligibility Requirements will be evaluated to determine compliance with threshold requirements, which have been designed to screen out proposals that are insufficiently mature from a project development perspective; lack technical viability; impose unacceptable financial accounting consequences for the Distribution Companies; do not satisfy the minimum requirements set forth in Section 83 of the GCA; are not in compliance with RFP requirements pertaining to credit support, or fail to satisfy minimum standards for bidder experience and ability to finance the proposed project. The threshold requirements for this RFP are set forth below.

2.2.3.2 Reasonable Project Schedule

The Soliciting Participants are interested in projects that can demonstrate the ability to develop, permit, finance, and construct the proposed Eligible Facility within a reasonably proximate time or are operating projects that satisfy the requirements of Section 83 of the GCA. To that end, Eligible Bidders must provide a reasonable schedule that provides for *both* of the following:

- a. Closing of construction financing and commencement of construction on or by December 31, 2012; and
- b. Commercial Operation Date on or by December 31, 2015.

A proposal that does not have a reasonable schedule that provides sufficient time for the application for, and receipt of, necessary permits and approvals may be determined not to have satisfied this threshold requirement. In addition, a proposal that is determined to have a “fatal flaw” such that it will be unable to obtain permits or property rights necessary to finance and construct the proposed project may be determined not to have satisfied this threshold requirement.

2.2.3.3 Site Control

The bidder must demonstrate that it has control or a right to acquire control over a site for its proposed project. To meet this threshold requirement, bidders must either provide documentation showing that they own the site or have a lease with respect to the site on which the proposed project will be located; have an option agreement to purchase or lease the site, or at a minimum have negotiated a letter of intent for control of the site. Bidders that only have a letter of intent for the site at the time of bid submission may be required to obtain a binding site control agreement at a later time prior to execution of a PPA (which may include an option to purchase or an option to lease). Site control for offshore wind projects or projects on state lands will be evaluated based on the particular submissions of bidders and the extent to which they can demonstrate a high likelihood that they will be able to obtain the necessary rights to construct and operate the proposed project, including the real property rights associated with the interconnecting facilities from the proposed project to the transmission grid or local distribution facilities.

2.2.3.4 Technical Viability; Ability to Finance the Proposed Project

The bidder must demonstrate that the technology it proposes to use is technically viable and that the bidder has the ability to finance the proposed project. Technical viability may be demonstrated by showing that the technology is commercially available and has been used successfully. If a bidder plans to use technology that is not commercially proven, it must provide evidence of technical viability and a credible plan to finance the project in light of the state of development of the technology. All bidders must provide a reasonable plan for financing the proposed project, including the funding of development costs and the required development period security and the ability to acquire the required equipment in the time frame proposed.

2.2.3.5 Experience

The bidder must demonstrate that it has a sufficient amount of relevant experience to successfully develop, finance, construct and operate its proposed project. This demonstration can be made by showing that bidder (or a substantial member of Bidder’s development team) has:

- a. Successfully developed a similar type of project; OR
- b. Successfully developed one or more projects of different technologies but of similar size or complexity or requiring similar skill sets; AND
- c. Experience in financing power generation projects.

2.2.3.6 Contribution to Electricity Reliability Within Massachusetts

One of the criteria for approval of a long-term contract by the MDPU under Section 83 of the GCA is that the proposed generation project must “provide enhanced electricity reliability within the commonwealth.” This threshold requirement can be satisfied by bidder’s agreement to commit any qualifying capacity to ISO New England Inc. (“ISO-NE”). Bidders may provide other demonstrations which will be considered in determining whether this threshold requirement is satisfied.⁵

2.2.3.7 Contribution to Moderating System Peak Load Requirements

Another criterion under Section 83 of the GCA is that a proposed project must “contribute to moderating system peak load requirements. This threshold requirement can be satisfied by bidder’s demonstration of projected energy output during the peak hours of ISO-NE’s summer and/or winter peak periods. For purposes of this RFP, these hours are 1 pm through 6 pm for the months of June through September (summer period) and 5 pm through 7 pm for the months of October through May (winter period).⁶

2.2.3.8 Contribution to Massachusetts Employment

Another criterion under Section 83 of the GCA is that a proposed project create additional employment in the Commonwealth, where feasible. This threshold requirement can be satisfied by a showing of:

- a. Direct employment benefits associated with the proposed project;
- b. Indirect employment benefits associated with the proposed project.

2.2.3.9 Security Requirements

Bidders will be required to post Development Period Security and Operating Period Security. The required levels of Development Period Security are the Per kW Development Period Security Amount multiplied by (a) the proposed project’s nameplate capacity (in kW) if the entire output of the proposed project is proposed to be sold under this RFP or (b) the percentage of the proposed project’s output that is proposed to be sold under this RFP multiplied by the project’s nameplate

⁵ For example, small generators electing to be load reducers may demonstrate that they contribute to electricity reliability by reducing the capacity requirements of the distribution company in whose zone they would be interconnected to the grid.

⁶ These are the hours used in ISO New England’s Forward Capacity Market for determining Qualified Capacity for Intermittent Resources.

capacity.⁷ For projects that have projected capacity factors of 50% or more, the Per kW Development Period Security Amount is \$30; for projects that have projected capacity factors of less than 50% but more than 20%, the Per kW Development Period Security is \$20; for projects that have projected capacity factors of 20% or less, the Per kW Development Period Security is \$10. Fifty percent of the Development Period Security must be provided upon execution of the PPA. The remaining 50 percent of the Development Period Security must be provided upon MDPU approval of the PPA. Development Period Security will be promptly returned if the MDPU does not approve the PPA. Once a project achieves Commercial Operation, the amount of required security (Operating Period Security) will be the same as the required amount of Development Period Security.

The required security must be in the form of a cash deposit or a letter of credit, except that for Operating Period Security, individual Distribution Companies may be willing to accept alternative forms of security for part or all of the required security, such as a corporate guarantee from an entity with a credit rating of BBB or better from Standard & Poor's or Baa2 or better from Moody's Financial Services.

2.2.3.10 Unreasonable Balance Sheet Impacts

Section 83 of the GCA provides that a Distribution Company may decline to consider contract proposals having terms and conditions that it determines would place an unreasonable burden on the Distribution Company's balance sheet. Each individual Distribution Company retains the right to make such a determination based upon its evaluation of particular proposals.

In the Response Package, bidders are required to provide information that will assist a Distribution Company in determining whether a contract based on the proposal submitted would place an unreasonable burden on its balance sheet.⁸ If a Distribution Company determines that a proposal would impose such a burden or at least a substantial risk of such a burden, it will notify the bidder in writing and will explore with the bidder whether the structure of the proposed generation entity or power purchase agreement can be modified to prevent an unreasonable burden being placed on the Distribution Company's balance sheet. If after such process, the Distribution Company determines that the bidder's proposal, as it may have been modified, places an unreasonable burden on the Distribution Company's balance sheet, it may decline to give further consideration to the proposal. In that event, the Distribution Company shall, pursuant to 220 CMR 17.04(3), report and demonstrate to the MDPU the effect that the rejected contract proposal would have on its balance sheet within 10 business days of rejecting the proposal.

⁷ For projects that have significant auxiliary loads, net generating capacity may be used in lieu of nameplate capacity.

⁸ Review of balance sheet impacts would include, but not be limited to, a Distribution Company's assessment of whether a proposal would result in the seller under the proposed PPA being a variable interest entity that would trigger consolidation of seller's finances on to the Distribution Company's balance sheet under Financial Accounting Standards Board Interpretation No. 46 (revised December 2003) ("FIN46R").

The Distribution Companies reserve the right to review contract proposals for balance sheet impacts at any time during the evaluation process. For example, a Distribution Company might only review highly ranked project proposals for their balance sheet impact.⁹

2.2.3.11 Timeliness

The bid submitted must be timely submitted in accordance with Sections 3.1 and 3.8 of this RFP.

2.2.4 Other Minimum Requirements

Other RFP requirements pertain to bid certification, allowable pricing and bid completeness, as described in this section.

2.2.4.1 Proposal Certification

Bidders are required to provide firm pricing for 120 days from the date of bid submission. The bidder must also sign the certification form in Appendix B verifying that the prices, terms and conditions of the proposal are valid for at least 120 days. An officer or duly authorized representative of the bidder is required to sign the Proposal Certification Form.

2.2.4.2 Allowable Forms of Pricing

The Distribution Companies will accept proposals from renewable resources for energy and/or RECs that offer one or a combination of the following pricing options:

- (1) a fixed price (in \$/MWh and/or \$/REC) for the term of the contract;
- (2) a price (in \$/MWh and/or \$/REC) that changes by a fixed rate for the term of the contract (e.g. 2% increase per year); or by different fixed rates for various periods of the contract (e.g. 3% increase for the first 5 years, 2% for the next 5 years, etc.);
- (3) an indexed price (in \$/MWh and/or \$/REC) based on a published, publicly available inflation-related index that reflects actual project costs for a portion of the costs of the project (e.g., operating and maintenance costs); provided, that the index must be used in a symmetrical manner (i.e., it must allow for both price increases and decreases depending on

⁹ In connection with this review, a bidder, at the request of one or more Distribution Companies, may be required to provide pro forma income and cash flow statements for the term of the proposed PPA (including revenue and cost data by major categories, debt service, depreciation expense and other relevant information).

whether the pertinent index increases or decreases in value, and prices with a floor must also have a symmetrical ceiling).¹⁰

These forms of pricing are conforming under this RFP. The Soliciting Participants may consider other forms of pricing as an alternative as long as the bidder submits a proposal for the project with conforming pricing. Alternative (non-conforming) pricing may be considered subject to the following conditions:

- Any pricing formula must be symmetrical—in other words, if an index is to be utilized, prices must be allowed to increase or decrease in a symmetrical manner relative to a base price;
- There must be a price cap for each year under the proposed contract.

The Distribution Companies are under no obligation to accept any form of alternative (non-conforming) pricing.

The Delivery Point for electric energy must be (a) at an ISO-NE Pool Transmission Facility node or (b) for load reducers at a point on the local distribution system.

With respect to any pricing proposal, payments will only be made for Products delivered.

2.2.4.3 Bid Completeness: Bidder Response Forms and Model PPA

Bidders must use the forms provided in Appendix B and provide complete responses. Appendix B contains the Bidder Response Forms which outlines the information required from each bidder. Bidders are required to provide the information requested in each section of the Bidder Response Form. If any of the information requested is inconsistent with the type of technology or product proposed, the Bidder should include “N/A” and describe the basis for this designation. If a bidder does not have the information requested in the bid forms and cannot obtain access to that information prior to the bid submittal due date, the bidder should provide an appropriate explanation.

Appendix C is the Model PPA. Bidders are required to review the Model PPA and provide a red-line version of the Model PPA with their requested changes and a detailed description of the substantive changes they propose to make, if any. The requested changes will be reviewed and considered in the context of an overall risk assessment associated with each proposal. If bidders do not propose to make any changes to the Model PPA, they must so state. Bidders are discouraged from proposing fundamental changes to the risk allocation set forth in the Model PPA.

2.3 Second Stage Evaluation – Price and Non-Price Analysis

Proposals that meet the requirements of the first stage review will then be subject to an initial price and non-price analysis. The results of the price and non-price analysis will be a relative ranking and

¹⁰ The Soliciting Parties will also accept bids in \$/kW-month for qualifying capacity under ISO-NE rules; provided, (a) that prices are fixed for the term of the PPA or escalate at fixed rates and (b) the Bidder’s proposal conforms with the ISO-NE market rules for its Forward Capacity Market and does not require the Distribution Company to be the Lead Market Participant for the bidder’s generating unit.

scoring of all proposals. The Soliciting Participants plan to weight price factors at 80 percent and non-price factors at 20 percent for purposes of conducting the initial evaluation.

2.3.1 Initial Evaluation Using Price-Related Evaluation Criteria

The price evaluation will be based on a comparison of (a) the total cost of the products bid, which may include energy, RECs, and, subject to acceptance by the Distribution Companies, capacity, to (b) the estimated market value of these products, taking into consideration the production profile and location of the proposed project over the term of the proposed bid (10-15 years) and locational marginal price benefits. The Soliciting Participants plan to use a common price forecast that will incorporate the effects of future federal regulation of carbon dioxide emissions on relevant energy prices. The metric used will be net \$/MWh cost or benefit based on a metric developed by the Soliciting Participants. Each bidder will be responsible for all costs associated with interconnecting its project to the transmission grid or, if applicable, local distribution facilities. Each bidder will identify in its bids its proposed Point of Delivery.

As part of the price evaluation, the Distribution Companies will assess the relative above-market or below-market costs during the beginning, middle and end years of the proposed contract bid in order to assess the relative front-loading or back-loading of the proposed bid. Other things being equal, bids that have front-loaded above-market costs will not be evaluated as favorably as other bids.

Proposals will be ranked from highest to lowest net benefit (or lowest to highest net cost) on a dollars per MWh basis based on the result derived through the application of the methodology described above (including consideration for front-loading/back-loading).

2.3.2 Initial Non-Price Evaluation

The non-price evaluation will consist of five overall categories: (1) siting and permitting; (2) project development status and operational viability; (3) experience and capabilities of bidder and the project development team; (4) financing; and (5) exceptions to the Model PPA. Within each category are a number of related criteria that will be considered in the evaluation. This section of the RFP will identify and describe in more detail the individual criteria within each primary category. The relative importance of each of the criteria in terms of the scoring of the bids will be developed prior to receipt of bids and will be utilized during the bid evaluation process.

2.3.2.1 Purpose of Non-Price Evaluation Criteria

The non-price evaluation criteria other than contract exceptions are designed to assess the likelihood of a project coming to fruition based on various factors critical to successful project development. The objectives of the criteria are to provide an indication of the feasibility and viability of each project and the likelihood of meeting the proposed commercial operation date. Proposals are preferred that can demonstrate, based on the current status of project development and past experience, that the project will likely be successfully developed and operated as proposed. The purpose of contract exceptions as a non-price evaluation criterion is to assess the extent to which a bidder seeks to change the risk allocation set forth in the Model PPA in a manner that is adverse to the Distribution Companies and their customers.

2.3.2.2 Factors to be Assessed in Non-Price Evaluation

Within each of the five non-price evaluation factors, a variety of project and proposal-related factors will be assessed. They are summarized as follows:

- Siting and permitting
 - Extent to which site control has been achieved, including acquisition of necessary easements or rights-of-way
 - Identification of required permits and approvals
 - Status of efforts and credibility of plan to obtain permits and approvals
 - Community relations plan
- Project development status and operational viability
 - Completeness and credibility of detailed critical path schedule; ability to meet scheduled construction start date and commercial operation date
 - Credibility of fuel resource plans or energy resource assessments
 - Reliability of proposed technology
 - Commercial access to proposed technology
 - Progress in interconnection process
- Experience and capabilities of bidder and project development team
 - Project development
 - Project financing
 - Operations and maintenance
 - Experience in the ISO-NE market
- Financing
 - Credibility of financing plan
 - Financial strength of bidder
- Exceptions to Model PPA
 - The extent to which bidder accepts provisions of the Model PPA
 - The extent to which bidder exceptions change risk allocation in a manner that is adverse to the Distribution Company buyer or buyers

The non-price evaluation will be conducted in a systematic fashion.

2.4 Third Stage Evaluation; Selection of the Initial Short List

Following the total price and non-price rankings conducted in the second evaluation stage, a further review of the bids will be conducted and a short list selected. In this third stage of the evaluation (and in selecting the short list), the Distribution Companies will consider and weight at their discretion the following factors:

- Ranking in the second stage evaluation;
- Cost effectiveness of the bids;
- Risk associated with project viability of the bids;
- The extent to which additional employment would be created within the Commonwealth;

- Portfolio effect: the value of diversity of resources—by size and type of resources

In order to provide greater assurance that the RFP will lead to successful results, DOER and the Distribution Companies believe that a third stage evaluation process that uses the second stage evaluation as a guide and provides for a reasonable degree of considered judgment based on criteria specified in this RFP is an important part of the RFP bid evaluation and selection process.

The Soliciting Participants will each conduct their own evaluations of the bids. With respect to bids submitted to more than one Distribution Company, the respective Distribution Companies and DOER plan to compare their evaluations of the bids at applicable stages of the bid evaluation process, which may result in the Soliciting Participants modifying their respective evaluations. In the third evaluation stage, the Distribution Companies plan to coordinate efforts with each other and DOER to arrive at bid shortlist selections that are not incompatible with each other.

Bids selected for the short-list will be available to the Distribution Companies for further evaluation and PPA negotiations. Distribution Companies may select individual resources for bilateral negotiations or one or more Distribution Companies may engage in joint negotiations with a specific bidder. During this phase of the evaluation, DOER will work with the Distribution Companies in the coordination of the bid selection and contract negotiation process.

The objective of the third stage of evaluation is to select the proposal(s) which provide the greatest value consistent with the stated objectives and requirements as set forth in the RFP. Generally, DOER and the Distribution Companies prefer viable projects that provide low cost renewable energy with limited risk and some degree of resource diversity. However, the Soliciting Participants recognize that any particular project may not be ranked highly with respect to all of these considerations and the extent to which the stated RFP objectives will be satisfied will depend, in large part, on the particulars of the proposals that are submitted.

2.5 Contract Negotiation Process

Bidders selected for negotiations by the Distribution Companies will be required to indicate in writing to the Distribution Companies whether they intend to proceed with their proposals within five business days of being notified. As previously noted, the individual Distribution Companies will take the lead on negotiating PPAs with individual bidders.

2.6 Regulatory Approval

Once a Distribution Company has executed a PPA as a result of this RFP process, the Distribution Company will submit its proposed PPA to the MDPU for review and approval within 30 days of execution to the extent reasonable efforts allow. The PPAs filed for approval by the MDPU as a result of this RFP will be the first filed under Section 83 of the GCA. Section 83 establishes several requirements relating to the MDPU's review and approval. In addition, the MDPU has promulgated regulations at 220 C.M.R. 17.05 ("General Criteria for Long-Term Contracts and Renewable Energy Generation Sources") setting forth the criteria for its review pursuant to the requirements of Section 83 of the GCA. The MDPU's regulations state that a proposed PPA for renewable energy generation must demonstrate that:

- (1) The proposed project has a commercial operation date, as verified by DOER, on or after January 1, 2008;
- (2) The proposed project is qualified by DOER as a RPS Class I Renewable Generation Unit pursuant to M.G.L. c. 25A, § 11F; and
- (3) The proposed project is determined by the MDPU to:
 - a. Provide enhanced electricity reliability within the Commonwealth;
 - b. Contribute to moderating system peak load requirements;
 - c. Be cost effective to Massachusetts electric ratepayers over the term of the contract; and
 - d. Create additional employment in the Commonwealth, where feasible.
- (4) The proposed project is a cost-effective mechanism for procuring renewable energy on a long-term basis.

In addition, in evaluating a proposed PPA, the MDPU will consider the recommendations of the Attorney General of the Commonwealth of Massachusetts, which must be submitted to the MDPU within 45 days of the filing of the proposed PPA.

Once the MDPU issues a decision approving a Distribution Company's request for approval of an executed PPA, the Distribution Company shall have five business days to review the form and substance of the Department's approval. The Distribution Company shall have the opportunity to terminate the PPA if the MDPU's approval contains terms or conditions that are deemed to be unsatisfactory to the Distribution Company, in its sole discretion. Terms or conditions that may be unsatisfactory, include but are not limited to, denial of annual remuneration equal to 4 percent of the annual payments under the contract, which is required by Section 83 and is intended to compensate the Distribution Company for accepting the financial obligation of the long-term contract at issue.

III. Instructions to Bidders

3.1 Schedule for the Bidding Process

The proposed schedule for the bidding process is set forth in Chart 1. The Soliciting Parties reserve the right to revise the schedule as necessary. Any changes to the schedule will be posted on the website for this RFP.

Chart 1

RFP Schedule

Event	Anticipated Dates
Issue RFP	January 15, 2010
Bidders Conference	January 29, 2010
Submit Notice of Intent to Bid	February 3, 2010
Deadline for Submission of Questions	February 3, 2010
Due Date for Submission of Proposals	February 19, 2010
Selection of Short-Listed Bidders	May 5, 2010
Negotiate and Execute Contracts	June 21, 2010
Submit Contracts for MDPU Approval	July 21, 2010

3.2 Bidders Conference; Bidder Questions; Notice of Intent to Bid

A Bidders Conference will be held for interested persons approximately two weeks after the final RFP document is posted on the RFP website. The purpose of the Bidders Conference is to provide the opportunity to clarify any aspects of the RFP. Prospective bidders may submit questions about the RFP prior to the Bidders Conference. The Soliciting Participants will attempt to answer questions submitted prior to and during the Bidders Conference. Although the Soliciting Participants may respond orally to questions posed at the Bidders Conference, only written answers that are provided in response to written questions will be official responses.

The Soliciting Participants will also accept written questions pertaining to the RFP following the Bidders Conference up to the date provided in Chart 1. Both the questions and the written responses will be posted on the RFP website (without identifying the person that asked the question).

Prospective bidders are also encouraged to submit a Notice of Intent to Bid form within 17 days of issuance of the RFP. The Notice of Intent to Bid form is attached as Appendix A to the RFP. The Soliciting Participants will provide any updates by email regarding the RFP to prospective bidders who submit a Notice of Intent to Bid. Persons that submit a Notice of Intent to Bid are not obligated to submit a proposal.

3.3 Preparation of Proposals

Each bidder shall have sole responsibility for carefully reviewing the RFP and all attachments and for thoroughly investigating and informing itself with respect to all matters pertinent to this RFP and its proposal, including pertinent ISO-NE tariffs and documents. Bidders should rely only on information provided in the RFP and any associated written updates when preparing their proposal. Each bidder shall be solely responsible for and shall bear all of its costs incurred in the preparation of its proposal and/or its participation in this RFP.

3.4 Submission of Proposals; Confidentiality

Bidders must submit one original and two bound copies of their proposal as well as two CDs with the entire contents of the proposal to the Official Contact for each Distribution Company that is intended to be the recipient of a proposal. Bids must be submitted by 5:00 p.m. eastern prevailing time on the due date for proposals set forth in Section 3.1. Fax or email submissions will not be accepted. The Distribution Companies reserve the right to reject any proposals received after the deadline.

Each proposal shall contain the full name and business address of the bidder and bidder's contact person and shall be signed by an authorized officer of the bidder. Bidders may sign the original proposal and include copies of the signature page with the remaining proposals.

Bidders must clearly identify all confidential information in their Proposals. However, bidders should take care to designate as confidential only those portions of their Proposals that genuinely warrant confidential treatment. The practice of marking each and every page of a Proposal as "confidential" is discouraged.

The Distribution Companies agree that they shall use commercially reasonable efforts to treat the non-public information it receives from bidders in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party or use such information for any purpose other than in connection with this RFP; provided, that, in any regulatory, administrative or jurisdictional proceeding in which confidential information is sought, the Distribution Companies shall take reasonable steps to limit disclosure and use of said confidential information through the use of non-disclosure agreements or orders seeking protective treatment, and shall inform the bidders if confidential information is being sought. Notwithstanding the foregoing, in any regulatory proceeding in which such confidential information is sought and a request for confidential treatment is made to the MDPU, the Distribution Companies shall not be responsible in the event that it is determined that the request for treating information in a confidential manner is not warranted. The bidders shall be required to use commercially reasonable efforts to treat all information received from the Distribution Companies in a confidential manner and will not, except as required by law or in a regulatory proceeding, disclose such information to any third party.

The Distribution Companies reserve the right to share confidential information with each other and DOER (a) with respect to bids that are made to more than one Distribution Company in order to facilitate their evaluation and selection of bids, (b) with respect to the negotiation of a PPA, to the extent that more than one Distribution Company has selected the same bid for negotiations, and (c) with respect to DOER with respect to bids that are made to any Distribution Company,

Bidders should be aware that, under recent decisions issued by the MDPU, confidential price and price-related terms and conditions may be disclosed during the MDPU approval process to parties granted intervenor status in the proceeding. In past proceedings, intervenor status has been granted to competitive suppliers and industry trade groups, and therefore, confidential price information has been required to be disclosed to legal counsel and/or a third-party consultant retained by the intervenor for purposes of the proceeding.

Confidential pricing information relating to the bid submissions and in the possession of DOER from time to time is not subject to public disclosure. Under G.L. c. 4, § 7(26)(g) and G.L. c. 25A, § 7,

DOER retains statutory authority to protect trade secrets or commercial or financial information, as well as price, inventory and product delivery data.

3.5 Official Contact for the RFP; Other Contact Persons

All copies of the proposal should be sent to the attention of the Official Contact for the Distribution Company for which a proposal is being made at the address listed below:

Fitchburg Gas & Electric Company d/b/a Unitil:

Robert S. Furino
Director, Energy Contracts
Unitil Service Corp.
6 Liberty Lane
Hampton, NH 03842-1720
(603) 773-6452

Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid:

Madison Milhous
Director, Wholesale Market Relations
Energy Portfolio Management
National Grid
100 East Old Country Road
Hicksville, NY 11801
(516) 545 2309

NSTAR Electric Company:

Jeffery Waltman
Manager, Planning and Power Supply
NSTAR Electric & Gas Corp.
One NSTAR Way, SUMNE220
Westwood, MA 02090-9230
(781) 441-8254

Western Massachusetts Electric Company:

Tim Honan
Manager, Wholesale Power Contracts
Northeast Utilities Service Company
107 Selden Street
Berlin, CT 06037
(860) 665-4524

Any questions regarding the RFP should be sent to the Official Contact for the Soliciting Participants at the following email address: James DeMetro, James.Demetrio@state.ma.us. The following persons should be sent copies by email of such comments or questions:

Robert S. Furino, furino@unitil.com
Madison Milhous, madison.milhous@us.ngrid.com

Jeffery Waltman, Jeffery.Waltman@nstar.com
Tim Honan, honantj@nu.com
Barry J. Sheingold, bjs@newenergyopps.com

3.6 Organization of the Proposal

Bidders are required to organize their proposal consistent with the contents of the Response Package in Appendix B. The organization and contents of the proposal should be organized as follows:

1. Proposal Certification Form
2. Proposal Summary/Contact Information
3. Executive Summary
4. Pricing Information and Schedules
5. Project Operational Parameters
6. Energy Resource Plan
7. Financial/Legal
8. Siting and Interconnection
9. Environmental Assessment and Permit Acquisition Plan
10. Engineering and Technology
11. Operations and Maintenance
12. Project Schedule
13. Project Management/Experience
14. Alternatives
15. Exceptions to Model PPA

3.7 Modification or Cancellation of the RFP and Solicitation Process

Following the submission of bids, the Soliciting Participants may request additional information from Bidders at any time during the process. Bidders that are not responsive to such information requests may be eliminated from further consideration. Unless otherwise prohibited, the Soliciting Participants may, at any time up to final award, postpone, withdraw and/or cancel this RFP; alter, extend or cancel any due date; and/or, alter, amend, withdraw and/or cancel any requirement, term or condition of this RFP, any and all of which shall be without any liability to DOER and the Distribution Companies.

By submitting a bid, a bidder agrees that the sole recourse that it may have with respect to the conduct of this RFP is by submission of a complaint or similar filing to the MDPU in a relevant docket pertaining to this RFP.

Appendix A

Notice of Intent to Bid

**APPENDIX A
NOTICE OF INTENT TO BID
(CONFIDENTIAL)**

1 Company Name: _____

2 Contact Person Information:

Name	
Title/Position	
Mailing Address	
Courier Address (if different)	
Telephone Number	
Fax Number	
E-mail Address	

3 Expected Resource Type or Technology: _____

4 Project Size (MW): _____

5 Project Location : _____

6 Estimated Commencement of Construction Date: _____

Estimated Commercial Operation Date: _____

7 Authorized Signature: _____

Title: _____ Date: _____

Bidders should send the Notice of Intent to Bid Form by mail and by email to the addressees for the Distribution Companies set forth in Section 3.5 of the RFP.

Appendix B

Bidder Response Forms

1. Proposal Certification Form

Bidder's Authorized Representative's Signature and Acceptance Form

The undersigned is a duly authorized representative of the Bidder listed below. The Bidder hereby certifies that all the statements and representations made in this Proposal are true and accurate to the best of the Bidder's knowledge. The Bidder represents that it understands the requirements, terms and conditions of the RFP.

The Bidder agrees that the prices, terms and conditions of this Proposal are valid for at least 120 days after bid submission.

Submitted by: _____
(Exact legal name of Company)

Bidder _____
(if different than above)

Signature of an Officer
Of Bidder _____

Print or type name of
Officer _____

Title: _____

Date Signed: _____

2. Proposal Summary/Contact Information

Bidder Name: _____

Project Name: _____

Technology (Wind, landfill gas,
Solar photovoltaics, hydro,
Biomass, etc.)¹ _____

Estimated Commercial
Operation Date _____

Products Bid (check all products proposed)

Energy _____
Renewable Energy Certificates ("RECs") _____
Capacity _____

Project Site/Location:
City or Town: _____

Proposed Interconnection Point _____

Proposed Point of Delivery _____

Project Contact:
Name: _____
Address: _____

Phone Number: _____

Email Address: _____

Facsimile Number: _____

Total capacity of the Project (MW):
Gross: _____
Net: _____

Contract Maximum Amount available for Delivery to Distribution Company(ies) at the
Point of Delivery (kWh per hour): _____

¹ _____
The technology or resource type must qualify as a Class 1 RPS Renewable Generation Unit under 225 CMR
14.00 *et seq.*

Expected Annual Energy Production to be Delivered to the Distribution Company(ies) at the Point of Delivery (MWh)

Estimated Net Capacity Factor (%) _____

Study Provided to Support
Estimated Generation _____ (Yes) _____ (No)

If Yes, Name of Firm Who
Prepared the Study _____

Expected Annual Availability (%) _____

Term of Contract: _____

Estimated Equipment Life _____

Equipment Manufacturer _____

Project Type (check as applicable) _____ Non-Firm Intermittent Energy
_____ Baseload Energy
_____ Dispatchable Energy

Proposal is submitted to (check all applicable):

- _____ Fitchburg Gas & Electric Company d/b/a Unitil
- _____ Massachusetts Electric Company/Nantucket Electric Company d/b/a National Grid
- _____ NSTAR Electric Company
- _____ Western Massachusetts Electric Company

With respect to the Distribution Companies, indicate the maximum percentage entitlement (in %), if there is any, associated with your proposal to any of the Distribution Companies:

_____ No limitation (check, if applicable)
_____ Limitation, as indicated below

- _____ Fitchburg Gas & Electric Company d/b/a Unitil
- _____ Massachusetts Electric Company/Nantucket Electric Company d/b/a National Grid
- _____ NSTAR Electric Company
- _____ Western Massachusetts Electric Company

3. Executive Summary of the Proposal (including the base proposal and any alternative proposals)

The Bidder is required to provide an executive summary of the project proposal in this Section of the Bid Form. The Bidder should include a description of the important elements of the proposal consistent with the sections included in the Bidder Response Forms. Bidders should provide sufficient information to clearly demonstrate how their proposal conforms to the eligibility and threshold criteria specified in Section 2.2 of the RFP.

4. Pricing Information

This Section 4 is to be used for conforming pricing. Non-conforming pricing may be proposed in Section 14, Alternatives.

Bidders are required to complete a Pricing Schedule for each applicable product proposed in an Excel spreadsheet provided on the RFP website and in the appropriate columns below. Bidders should also fully describe their pricing formula, including any combination pricing (e.g., fixed portion plus a portion that adjusts according to a published, publicly available inflation-related index). Pricing is to be specified on a contract year basis (i.e., the first Contract Year commences on the Commercial Operation Date and ends on the last day of the month that is 12 months later; the second Contract Year begins on the first day following the end of the first Contract Year; and each subsequent Contract Year commences on the anniversary of the day following the end of the first Contract Year). In the description of the pricing formula, the Bidder should specify for all products proposed the starting date for pricing, the published, publicly available inflation-related index to be applied in the pricing formula, if any, the timing for applying fixed or variable escalators, and whether Bidder is proposing to bid capacity and, if so, the price for such capacity.²

Pricing Schedule

Contract Year	Annual Contract Energy to be Delivered to the Buyer at the Point of Delivery (MWh) ³		Energy Price (\$/MWh)		Escalation Rate to be Applied, if Applicable ⁴	REC Price (\$/REC)
	On-Peak ⁵	Off-Peak	On-Peak	Off-Peak		
1						
2						
3						

² If a capacity bid is included, the Bidder should specify the price per kW-month for qualifying capacity under ISO-NE rules for each Contract Year, both in Excel format and in Bidder's hard copy response on pricing; provided, (a) that prices are fixed for the term of the PPA or escalate at fixed rates, (b) the Bidder's proposal conforms with the ISO-NE market rules for its Forward Capacity Market and does not require the Distribution Company to be the Lead Market Participant for the Bidder's generating unit, and (c) the Bidder has specified in its response under Section 15 of the Bidder Response Package the terms and conditions under which the qualifying capacity is being bid pursuant to this RFP.

³ The annual energy sales estimates should be consistent with the information to be provided pursuant to Section 5.1.2 of the Response Package.

⁴ Escalation Rate may be (a) fixed or (b) based on a publicly available, inflation-related index.

⁵ For purposes of this RFP, On-Peak is defined as hours ending 8 through 23 Monday through Friday, excluding NERC holidays. Off-Peak is defined as all other hours.

Pricing Schedule (cont'd)						
Contract Year	Annual Contract Energy to be Delivered to the Buyer at the Point of Delivery (MWh)		Energy Price (\$/MWh)		Escalation Rate to be Applied, if Applicable	REC Price (\$/REC)
			On-Peak	Off-Peak		
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

Description of the Pricing Formula:

Index Proposed/portion of price to which it is being applied:

Fixed Rate: _____ (Yes or No)

5.1.2 Energy Generation

Expected Gross Annual Energy Production _____ MWh/yr

Expected Net Annual Energy Production _____ MWh/yr

Expected Peak and Off-Peak Monthly Production⁷

Month	On-Peak (MWh/Mon)	Off-Peak (MWh/Mon)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		
Total		

5.1.3 Annual Degradation Rate (if any) and basis for it: _____

5.2 Heat Rate (If Applicable)

If heat rate information is necessary for pricing associated with your facility, please provide a column to the Pricing Schedule, which includes the “Projected Heat Rate” values. These values should include the effect of all generation that will be produced at the contract rate and will be used for contract payment rate calculation (e.g. for generators with heat recovery technology, please provide the lower heat rate indicating the efficiency of this combined technology). Heat rates should be stated in MMBtu/kWh in HHV)

⁷ If the level of generation is expected to vary over the life of the Power Purchase Agreement (“PPA”), the bidder should provide an expanded table for the term of the PPA.

5.3 Operating Mode

5.3.1 Proposed method/mode of Operation

Intermittent Only _____
(Please define parameters of operation)

Must Run (at full load) _____

5.4 Maintenance Outage Requirements – Specify partial and complete planned outage requirements in weeks or days. Also, list the number of months required for the cycle to repeat (e.g., list time interval of minor and major overhauls, and the duration of overhauls).

5.5 Operating Constraints - Specify all the expected operating constraints and operational restrictions for the project (i.e. limits on the number of hours a unit may be operated per year or unit of time).

5.6 Reliability – Describe how the proposal would provide enhanced electricity reliability within Massachusetts.

5.7 Moderation of System Peak Load – Describe how the proposal would contribute to moderating system peak load requirements. If the proposed project is an intermittent resource, please provide the following information:

- Estimated average output for each summer period (June-September) from 1:00 pm-6:00 pm
- Estimated average output for each winter period (October-May) from 5:00 pm-7:00 pm

6. Energy Resource Plan

The Bidder is required to provide an energy resource or fuel supply plan for its proposed project, including supporting documentation. The fuel supply/energy resource profile information should be consistent with the type of technology/resource option proposed and the term of the PPA proposed. The information requested is organized according to the type of project or energy resource. Bidders should respond only to relevant questions.

Wind Energy Projects:

- Provide a summary of all collected wind data for the proposed site. Identify when the data was collected and by whom.
- Indicate where the data was collected and its proximity to the proposed site. Include an identification of the location for the anemometers that were used to arrive at an assessment of the site generation capability.
- Provide (a) at least one year of hourly wind resource data, or (b) a wind resource assessment report from a qualified resource assessment firm or meteorologist, or (c) both. Include an analysis of the available wind data which addresses the relationship between wind conditions and electrical output.
- Provide a projection of gross and net annual energy production, including projections of average net hourly energy production, based on the wind resource data (a 12 x 24 energy projection).
- Please provide an explanation if the average of the hourly MWh of production is different from the expected Net Annual Energy Production.
- Provide a site-adjusted power curve. Each curve should list the elevation, temperature and air density used.
- Identify the assumptions for losses in the calculation of projected annual energy production, including each element in the calculation of losses.

Landfill Gas

- Provide a gas production forecast for each landfill. Provide a table that shows the annual, monthly and hourly projection of gas flow and energy export to the Distribution Company from each landfill.
- Provide supporting data that illustrates the expected generation from each landfill based on the projected gas production.
- Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels.

Biomass

- Provide a resource assessment of available biomass fuel for the proposed project and its proximity to the project site.

- Provide a plan for obtaining the biomass fuel, including a transportation plan.
- Provide any contracts or letters of intent to acquire and transport the biomass fuel.
- Demonstrate that projected energy output for the project over the term of the contract is consistent with the energy supply available.
- Describe any contingencies or constraints that could affect the availability of fuel or the energy resource for the project and any contingency plans for meeting projected generation levels

Solar

- Provide an assessment of the available solar incidence or resource and the projected production profile for the project. Identify anticipated generation by hour and month for at least a one-year period and describe any trends in generation capability over time (i.e. annual decline rate of expected output).
- Describe the methodology used to generate the projected generation and describe the in-house or consulting expertise used to arrive at the generation estimates.

Hydro

- Describe the project characteristics in terms of water flow (on a monthly basis) and head, and state the assumptions regarding seasonal variations, and a conversion of such flow into kilowatts and kilowatt-hours. Provide monthly flow duration curves based upon daily stream flow records.
- Identify if the project is run-of-river or has storage capability.
- If the project is an expansion of an existing project, (a) provide energy output estimates with and without the proposed expansion and (b) specify the quantity of energy that would qualify as RPS Class I Renewable Generation and the actions proposed to be taken by the Bidder to accomplish such qualification.

Other

- Identification of availability of fuel supply (if applicable).
 - What is the availability of the fuel supply?
 - Does the Bidder have any firm commitments from fuel suppliers? If so, please provide a copy of any agreements with confidential information redacted if necessary.

7. Financial/Legal

Bidders are required to provide responses to all questions below. Bidders are required to demonstrate the financial viability of their proposed project. Bidders should provide the following information:

- 7.1 Provide a description of the corporate structure of the Bidder's organization from a financial and legal perspective, including any general and limited partners, officers, directors, managers, members and shareholders, involvement of any subsidiaries supporting the project, and the providers of equity and debt during project development. Provide an organization chart showing the relationship between the equity participants and an explanation of the relationships.
- 7.2 Provide the credit ratings from Standard & Poor's and Moody's (the senior unsecured long term debt rating or if not available, the corporate rating) of the Bidder or any affiliated entity which Bidder proposes would provide a guarantee in support of Bidder.
- 7.3 Provide a description of the financing plan for the project, including construction and term financing. The financing plan should address the following:
 - Who will finance the project and how it will be financed
 - The project's projected financial structure
 - Expected sources of debt and equity financing
 - Estimated construction costs
 - The projected capital structure
 - Describe any agreements entered into with respect to equity ownership in the proposed project and any other financing arrangement.

In addition, the financing plan should address the financing of development costs. All bidders are required to provide this information.

- 7.4 Provide documentation illustrating the experience of the project sponsor in securing financing for projects of similar size and technology. For each project previously financed provide the following information:
 - Project name and location
 - Project type and size
 - Date of construction and permanent financing
 - Form of debt and equity financing
- 7.5 Provide evidence that the Bidder has the financial resources and financial strength to complete and operate the project as planned.

- 7.6 Provide copies of the most recent audited financial statement or annual report for each Bidder, including affiliates of the Bidder. Also, list the current credit rating from Standard & Poor's and Moody's for the sponsor, affiliates, partners, and credit support provider.
- 7.7 The Bidder should demonstrate its ability (and/or the ability of its credit support provider) to provide the required security, including its plan for doing so.
- 7.8 Provide a description of any current credit issues regarding the Bidder or affiliate entities raised by rating agencies, banks, or accounting firms.
- 7.9 Describe the role of the federal Production Tax Credit or Investment Tax Credit (or other incentives) on the viability of the project.
- 7.10 Bidders must disclose any pending or threatened litigation related to projects owned or managed by them or any of their affiliates in the United States.
- 7.11 What is the expected operating life of the proposed project?

8. Siting and Interconnection

This section of the response package addresses project location, siting, real property rights and interconnection issues. Bidders should ensure that the threshold criteria for siting are verified in their responses.

- 8.1 Provide a site plan including a map of the site that clearly identifies the location of the site, the total acreage, the anticipated interconnection point, and the relationship of the site to other local infrastructure, including transmission facilities, roadways, and water sources. In addition to providing the required map, provide a site layout plan which illustrates the location of all major equipment and facilities on the site.
- 8.2 Provide evidence of the right to use the site.
- Does the project have a right to use the site (e.g., by virtue of ownership or land rights obtained from the owner)?
 - If so, please identify the means of site control.

Include any relevant documentation, e.g., lease agreement, option to lease, purchase agreement, option to purchase, or letter of intent regarding any of the foregoing.

- 8.3 Provide evidence that the site is properly zoned. If the site is not currently zoned properly, identify present and required zoning and/or land use designations and provide a permitting plan and timeline to secure the necessary approvals.
- 8.4 Provide a description of the area surrounding the site including a description of the local zoning, flood plain information, existing land use and setting (woodlands, grasslands, agriculture, other).
- 8.5 Identify any real property rights (e.g., fee-owned parcels, rights-of-way or easements) that are required for access to the project or for interconnection. Describe the status of acquisition of real property rights, and describe the plan for securing the necessary real property rights, including the proposed timeline. Include these plans and the timeline in the overall project timeline.
- 8.6 Please describe the status of any planned interconnection to the grid. Has the Bidder made a valid interconnection request to ISO New England, Inc. (“ISO-NE”) or the transmission owner? Describe the status of any interconnection studies already underway with ISO-NE and the transmission owner. Provide a copy of any studies completed to date. Provide a copy of an interconnection agreement, if any, executed by the Bidder with respect to the proposed project. If an interconnection agreement has not been executed, please provide the steps that need to be completed before an interconnection agreement can be executed and the associated timeline.

- 8.7 Provide a copy of an electrical one-line diagram showing the interconnection facilities and the relevant facilities of the transmission owner.
- 8.8 Specify and describe the interconnection and transmission facilities that are required, including system control and protection.

9. Environmental Assessment and Permit Acquisition Plan

This section addresses environmental and other regulatory issues associated with project siting, development and operations.

- 9.1 Provide a list of all the permits, licenses, and environmental assessments and/or environmental impact statements required. If a bidder has secured any permit or has applied for a permit, please identify in the response.
- Provide a list of all Federal, state and local permits, licenses, and environmental assessments and/or environmental impact statements required to construct and operate the project.
 - Identify the governmental agencies which will issue or approve the required permits, licenses, and environmental assessments and/or environmental impact statements.
- 9.2 Provide the anticipated timeline for seeking and receiving the required permits, licenses, and environmental assessments and/or environmental impact statements, using the execution date of the PPA as the starting point, if applicable. Include a project approval assessment which describes, in narrative form, each segment of the process, the required permit or approval, and the basis for projection of success by the milestone date. All requirements should be included on the project schedule in Section 12.
- 9.3 Provide a preliminary environmental assessment of the site and project, including both construction and operation. The Bidder should identify environmental impacts associated with the proposed project, any potential impediments to development, and its plan to mitigate such impacts or impediments. The analysis should address each of the major environmental areas presented below:
- Site development
 - Transportation infrastructure
 - Air quality
 - Access to water resources/water quality
 - Ecology
 - Land use
 - Cultural resources
 - Previous site use
 - Noise level
 - Aesthetic/visual
 - Transmission infrastructure
 - Fuel supply access

- 9.4 Provide documentation identifying the level of public support for the project including letters from public officials, newspaper articles, etc. If the project sponsor has not yet initiated community outreach for the project, please provide a plan for community outreach activities.

10. Engineering and Technology; Commercial Access to Equipment; Contribution to Employment in Massachusetts

This section includes questions pertinent to the engineering design and project technology. Bidders should provide information about the specific technology or equipment including the track record of the technology and equipment.

- 10.1 Provide a reasonable but preliminary engineering plan which includes the following information:
- Type of generation technology
 - If wind turbines, provide the turbine make and model, hub height, rotor diameter, and power curve
 - Major equipment to be used
 - Manufacturer of the equipment
 - Status of acquisition of the equipment
 - Whether the Bidder has a contract for the equipment. If not, describe the Bidder's plan for securing equipment and the status of any pertinent commercial arrangements
 - Equipment vendors selected/considered
 - History of equipment operations
 - If the equipment manufacturer has not yet been selected, identify in the equipment procurement strategy the factors under consideration for selecting the preferred equipment
- 10.2 If the Bidder has not yet selected the major generation equipment for the project, please provide a list of the key equipment suppliers under consideration.
- 10.3 Please identify the same or similar equipment by the same manufacturer that are presently in commercial operations including the number installed, installed capacity and estimated generation for the past three years.
- 10.4 For less mature technologies provide evidence (including identifying specific applications) that the technology to be employed for energy production is ready for transfer to the design and construction phases. Also, address how the status of the technology is being considered in the financial plan for the project.
- 10.5 Please indicate if the Bidder has secured its equipment (e.g. wind turbines) for the project. If not, identify the long-lead equipment options and describe the timing for securing equipment.

- 10.6 Please provide an estimate of the number of jobs to be created directly during project development, construction and operations and a general description of the types of jobs created, estimated annual compensation, and the employer(s) for such jobs. How many of these jobs will likely be filled by Massachusetts residents? Please treat the development, construction, and operation periods separately in your response.
- 10.7 Please provide the same information as provided in response to question 10.6 but with respect to jobs that would be indirectly created as a result of the proposed project.

11. Operation and Maintenance

Projects that can demonstrate that the maintenance plan, level of funding, and mechanism for funding will ensure reliable operations during the term of the contract are preferred.

- 11.1 Provide an operation and maintenance plan for the project that demonstrates the long term operational viability of the proposed project. The plan should include a discussion of the staffing levels proposed for the project, the expected role of the project sponsor or outside contractor, scheduling of major maintenance activity, and the plan for testing equipment.
- 11.2 Describe in detail the proposed O&M funding mechanism and funding levels to support planned and unplanned O&M requirements.
- 11.3 Describe the terms (or expected terms) of the warranties and/or guarantees on major equipment that the Bidder is seeking.
- 11.4 Describe the status of the project sponsor in securing any operation and maintenance agreements or contracts. Include a discussion of the sponsors plan for securing a medium-term or long-term O&M contract, including the expected provider of O&M services.
- 11.5 Provide examples of the Bidder's experience with O&M services for other similar projects.

12. Project Schedule

Bidders are required to provide a complete critical path schedule for the project from the notice of selection of the project for contract consideration to the start of commercial operations. For each project element, list the start and end date.

- 12.1 Identify the elements on the critical path. The schedule should include, as a minimum, facility contracts, start of construction, construction schedule, siting, fuel supply, financing, engineering and procurement, acquisition of real property rights, Federal, state and/or local permits, licenses, environmental assessments and/or environmental impact statements (including anticipated permit submittal and approval dates) and any other requirements that could influence the project schedule, and the Commercial Operation Date.

13. Project Management/Experience

Bidders are required to demonstrate project experience and management capability to successfully develop and operate the project proposed. The Distribution Companies are particularly interested in project teams that have demonstrated success in projects of similar type, size and technology and can demonstrate an ability to work together effectively to bring the project to commercial operation in a timely fashion.

- 13.1 Provide an organizational chart for the project that lists the project participants and identifies the corporate structure, including general and limited partners.
- 13.2 For each of the project participants (including the Bidder, partners, A/E firm, EPC contractor and proposed contractors), provide statements that list the specific experience of the firm in developing, financing, owning, and operating generating facilities, other projects of similar type, size and technology, and any evidence that the project participants have worked jointly on other projects.
- 13.3 Provide a management chart that lists the key personnel dedicated to this project and provide biographies of the key personnel.
- 13.4 Provide a listing of all projects the project sponsor has successfully developed or that are currently under construction. Provide the following information as part of the response:
 - Name of the project
 - Location of the project
 - Project type, size and technology
 - Commercial operation date
 - Estimated and actual capacity factor of the unit for the past three years
 - Availability factor of the unit for the past three years
 - References, including the names and current addresses and telephone numbers of individuals to contact for each reference.
- 13.5 With regard to the Bidder's project team, identify and describe the entity responsible for the following:
 - Construction Period Lender, if any
 - Operating Period Lender and/or Tax Equity Provider, as applicable
 - Financial Advisor
 - Environmental Consultant
 - Owner's Engineer
 - EPC Contractor (if selected)
 - Transmission Consultant
 - Legal Counsel

- 13.6 With regard to Bidder's experience with ISO-NE markets, please indicate the entity that will assume the duties of Lead Market Participant for your Project. Please provide a summary of the proposed Lead Market Participant's experience with each of the ISO-NE markets.

14. Alternatives

With reference to Section 2.2.4.2 of the RFP, Bidders should describe any alternative options to their proposal which could include a different pricing formula, proposal size, or in-service date, if applicable.

15. Exceptions to Model PPA

Please attach a description of exceptions to the Model PPA set forth in Appendix C to this RFP, including the Bidder's counter-proposal with respect to the items to which exceptions are made and a redline to the Model PPA showing specific proposed language changes. Please note that bidders are discouraged from proposing fundamental changes to the risk allocation set forth in the Model PPA.

MODEL *

POWER PURCHASE AGREEMENT

BETWEEN

[FITCHBURG GAS AND ELECTRIC LIGHT COMPANY, D/B/A UNITIL]
[MASSACHUSETTS ELECTRIC COMPANY AND
NANTUCKET ELECTRIC COMPANY, D/B/A NATIONAL GRID]
[NSTAR ELECTRIC COMPANY]
[WESTERN MASSACHUSETTS ELECTRIC COMPANY]

AND

[_____]
[Seller]

As of [_____], 2010

*This model Power Purchase Agreement is intended to provide a general description of the terms that the Massachusetts electric distribution companies are willing to agree to. Each electric distribution company may have other requirements, and the final Agreement will be subject to negotiations with the individual electric distribution companies. Accordingly, certain provisions in the final Agreement may differ from this Model Agreement.

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Exhibit B	Seller's Critical Milestones – Permits and Real Estate Rights
Exhibit C	Form of Progress Report
Exhibit D	Insurance
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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “**Agreement**”) is entered into as of [_____] , 2010 (the “**Effective Date**”), by and between [Fitchburg Gas and Electric Light Company, d/b/a Unitil, a Massachusetts corporation] [Massachusetts Electric Company and Nantucket Electric Company, d/b/a National Grid, a Massachusetts corporation] [NSTAR Electric Company, a Massachusetts corporation] [Western Massachusetts Electric Company, a Massachusetts corporation] (“**Buyer**”), and [_____] , a [_____] (“**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 [_____] electric generation facility to be located in [_____] , Massachusetts, which is more fully described in Exhibit A hereto (the “**Facility**”), which shall qualify as a RPS Class I Renewable Generation Unit and which is expected to be in commercial operation by [_____] ; and

WHEREAS, Buyer is required under Section 83 of the Massachusetts Green Communities Act to enter into certain long-term contracts for the purchase of energy and/or renewable energy certificates from renewable generators meeting the requirements of that statute; and

WHEREAS, Buyer and Seller desire to enter into this Agreement whereby Buyer shall purchase from Seller certain Energy and RECs (each as defined herein) generated by 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. Any capitalized terms used in this Agreement and not defined herein shall have the same meaning as ascribed to such terms under the ISO-NE Practices and ISO-NE Rules.

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

“**Business Day**” means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to [_____] percent ([_]%) of the Products, up to and including the Contract Maximum Amount.

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

“Certificates” shall mean an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the “generation attributes” (as defined in 225 CMR 14.01) 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.

“Commercial Operation Date” shall mean the date on which the conditions set forth in Section 3.4(b) have been satisfied, as set out in a written notice from Seller to Buyer.

“Contract Maximum Amount” shall mean [_____] kWh per hour of Energy and a corresponding portion of all other Products.

“Contract Year” shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the Commercial Operation Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Contract Year shall include the days in the prior month in which the Commercial Operation Date occurred.

“Contract Value” shall have the meaning set forth in Section 9.3(b) hereof.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Cover Damages” shall mean, with respect to any Delivery Shortfall, an amount equal to (a) the positive net amount, if any, by which the Replacement Price exceeds the applicable Price that would have been paid pursuant to Section 5.1 hereof, multiplied by the quantity of that Delivery Shortfall, plus (b) any applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of Seller’s failure to deliver such Products in accordance with the terms of this Agreement. Buyer shall provide a statement for the applicable period explaining in reasonable detail the calculation of any Cover Damages.

“Credit Support” shall mean collateral in the form of (a) cash, (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the recipient Party or (c) with respect to Credit Support provided by Seller, any other form acceptable to Buyer in its sole discretion.

[**“CPR”** shall have the meaning set forth in Section 11.2 hereof.]

“Critical Milestones” shall have the meaning set forth in Section 3.1 hereof.

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

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

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

“Delay Damages” shall mean the damages assessed pursuant to Section 3.2(a) hereof.

“Deliver” or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy into Buyer’s ISO-NE account at the Delivery Point in accordance with the terms of this Agreement and the ISO-NE Rules or the rules of the Interconnecting Utility for those small projects recognized as a “load reducer”, and (ii) RECs, to supply RECs in accordance with Section 4.7(e).

“Delivery Point” shall mean the specific Node on the ISO-NE Pool Transmission Facilities, as determined by ISO-NE, where Seller shall transmit its Energy to Buyer, as set forth in Exhibit A hereto, except for small Massachusetts projects with a capacity value such that they are recognized by ISO-NE Rules as a “load reducer.” The Delivery Point for these small Massachusetts projects shall be the point of interconnection to the Interconnecting Utility’s distribution system.

“Delivery Shortfall” shall have the meaning set forth in Section 4.3 hereof.

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

“DOER” shall mean the Massachusetts Department of Energy Resources and shall include its successors.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

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

“Energy” shall mean electric "energy," as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in kWh in Eastern Prevailing Time, less such Facility’s station service use, generator lead losses and transformer losses, which quantity for purposes of this Agreement will never be less than zero.

“Environmental Attributes” shall mean any and all generation attributes under the DOER’s RPS 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 Buyer’s Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Contract Maximum Amount,

during the Services Term including Buyer's Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state, federal or private grants relating to the construction or ownership of the Facility or the output thereof.

"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 and Section 9.2 hereof.

"EWG" shall mean an exempt wholesale generator under 15 U.S.C. § 79z-5a, as amended from time to time.

"Facility" shall have the meaning set forth in the Recitals.

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

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

"Generation Unit" shall mean a facility that converts a fuel or an energy resource into electrical energy.

"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 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 in New England 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 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.

[“**Initial Notice**” shall have the meaning set forth in Section 11.1 hereof.]

“**Interconnecting Utility**” shall mean that the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission or distribution system of that utility.

“**Interconnection Agreement**” shall mean an agreement between Seller and the Interconnecting Utility regarding the interconnection of the Facility to the transmission or distribution system of the Interconnecting Utility, as the same may be amended from time to time.

“**Interconnection Point**” shall have the meaning set forth in the Interconnection Agreement.

“**ISO**” or “**ISO-NE**” shall mean the 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 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 as set forth in the ISO-NE Tariff.

“**kW**” shall mean a kilowatt.

“**kWh**” shall mean a kilowatt-hour.

“**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 party providing financing for the development and construction of the Facility, or any refinancing of that financing, and receiving a security interest in the Facility, 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 party.

“MDPU” shall mean the Massachusetts Department of Public Utilities and shall include its successors.

“Meters” shall have the meaning set forth in Section 4.6(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.

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission/Distribution Provider’s transmission and distribution systems necessary for Delivery of the Energy to the Delivery Point, as determined and identified in the interconnection study approved in connection with construction of the Facility.

“Node” shall have the meaning set forth in Market Rule 1.

“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 set forth in Exhibit A describing the physical limitations of the Facility, 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.

“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.

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

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof.

“Products” shall mean Energy and RECs; provided, however, that Energy and RECs generated by the Facility during the Test Period or in excess of the Contract Maximum Amount shall not be deemed Products.

“Projected Annual Energy Output” shall mean the historic average of actual generation since the Commercial Operation Date or, solely in the first Contract Year, [projected generation initially to be provided with the bid], in each case in MWh per Contract Year.

“QF” shall mean a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as amended from time to time.

“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 as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the MDPU’s approval of this Agreement, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to four percent (4%) of Buyer’s annual payments under this Agreement, which approval is acceptable in form and substance to Buyer in its sole discretion, does not include any conditions or modifications that Buyer deems, in its sole discretion, to be unacceptable and is final and not subject to appeal or rehearing.

“Rejected Purchase” shall have the meaning set forth in Section 4.4 hereof.

“Renewable Energy Certificates” or **“RECs”** shall mean all of the Certificates and any and all other Environmental Attributes associated with the Products or otherwise produced by the Facility which conform with the eligibility criteria set forth in the applicable Massachusetts regulations and are eligible to satisfy the RPS, and shall

represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

“Replacement Energy” shall mean Energy purchased by Buyer as replacement for any Delivery Shortfall.

“Replacement Price” shall mean the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy and Replacement RECs plus (i) transaction and other administrative costs reasonably incurred by Buyer in purchasing such Replacement Energy and Replacement RECs and (ii) additional transmission charges, if any, reasonably incurred by Buyer to transmit Replacement Energy to the Delivery Point; provided, however, that (a) in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets, contracts or market positions to minimize Seller’s liability, (b) Buyer shall have no obligation to purchase Replacement Energy and/or Replacement RECs, and (c) if Buyer does not purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs at the time of the Delivery Shortfall (as reasonably determined by Buyer) will replace the price at which Buyer purchases Energy and/or Replacement RECs in the calculation of the Replacement Price.

“Replacement RECs” shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Shortfall; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law and Seller is unable, using commercially reasonable efforts, to continue the Facility’s qualification as a RPS Class I Renewable Generation Unit after that change in Law, “Replacement RECs” shall mean Environmental Attributes including any Certificates or other certificates or credits related thereto reflecting generation by a generating facility having all of the same relevant Environmental Attributes as the Facility and satisfying the other renewable portfolio standards and renewable energy standards for which the Facility is qualified at such time pursuant to Section 4.7(c), that are purchased by Buyer as a replacement for any Delivery Shortfall.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 4.4 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase, 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. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

“Resale Price” shall mean the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase, plus 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.

"RPS" shall mean the requirements established pursuant to Mass. Gen. Laws ch. 25A, § 11F that require all retail electricity suppliers in Massachusetts to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

"RPS Class I Renewable Generation Unit" shall mean a Generation Unit that has received a Statement of Qualification from the DOER, including a Generation Unit termed a New Renewable Generation Unit in a Statement of Qualification issued by the DOER pursuant to 225 CMR 14.00.

[**"Rules"** shall have the meaning set forth in Section 11.3 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 and/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 at the Delivery Point.

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

"Seller's Taxes" shall have the meaning set forth in Section 5.4(a) hereof.

"Statement of Qualification" shall mean a written document from the DOER that qualifies a Generation Unit as an RPS Class I Qualified Generation Unit, or that qualifies a portion of the annual electrical energy output of a Generation Unit as RPS Class I Renewable Generation (as defined in 225 CMR 14.01).

"Supply Forecast" shall have the meaning set forth in Section 9.3(b) hereof.

"Term" shall have the meaning set forth in Section 2.2(a) hereof.

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

"Test Period" shall have the meaning set forth in Section 3.4(a) hereof.

"Transmission/Distribution Provider" shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; or (c) such other third parties from whom transmission or

distribution 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. Subject to Section 8.1, this Agreement is effective as of the Effective Date.

2.2 Term.

(a) The “**Term**” of this Agreement is the period beginning on the Effective 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 Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of [10 to 15] years from the Commercial Operation Date, unless this Agreement is 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.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

(a) Subject to the provisions of Section 3.1(c), commencing on the Effective Date, Seller shall develop the Facility in order to achieve the following milestones (“**Critical Milestones**”) on or before the date set forth in this Section 3.1(a):

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, by [_____];
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility interconnection of the Facility to the Interconnecting Utility and performance of Seller’s obligations under this Agreement as set forth on Exhibit B, by [_____];
- (iii) demonstration of the financial capability (whether through third party financing to Seller or Seller’s own financial assets)

to proceed with the development and construction of the Facility, including, as applicable, Seller's financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades by [_____] [on or before 12/31/12];

- (iv) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by [_____] [on or before 12/31/12]; and
- (v) achievement of the Commercial Operation Date by [_____] [on or before 12/31/15].

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer requires such written notice solely for monitoring purposes, and that nothing set forth in this Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) In addition to any extension of a date for a Critical Milestone as a result of a Force Majeure under Section 10.1, Seller may elect to extend all of the dates for the Critical Milestones not yet achieved (i) by one year without posting additional Development Period Security and (ii) by up to two additional six month periods by posting additional Development Period Security of \$[_____] [\$5 per kWh of Contract Maximum Amount] for each such six-month period. In no event may Seller exercise the right to extend the Critical Milestone dates under this Section 3.1(c) by more than two years, and in no event shall any extension of the Critical Milestone dates as a result of one or more Force Majeure events exceed a cumulative total of an additional twelve (12) months. Any such election shall be made in a written notice delivered to Buyer on or prior to the first date for a Critical Milestone that has not yet been achieved (as such date may have previously been extended).

(d) The Parties agree that time is of the essence with respect to the Critical Milestones and is part of the consideration to Buyer in entering into this Agreement.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the date set forth therefor in Section 3.1(a) (as extended pursuant to Section 3.1(c)), Seller shall pay to Buyer damages for each month from and after such date until the Commercial Operation Date at the rate of \$[_____] per month [\$1.50 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$1.00 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$0.50 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less] up to a maximum of twelve (12) months of delay, pro rated for partial months ("**Delay Damages**"). Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises

its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date 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 Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

(c) By the tenth (10th) day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. If Seller fails to pay such amounts when due, Buyer may draw upon the Development Period Security for payment of such Delay Damages, and Buyer may exercise any other remedies available for Seller's default hereunder.

3.3 Construction.

(a) 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 regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. 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.

(b) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to inspect the Facility site and monitor the construction of the Facility.

3.4 Commercial Operation.

(a) Seller's obligation to Deliver the Products and Buyer's obligation to pay Seller for such Products commences on the Commercial Operation Date; provided, that Energy and RECs generated by the Facility prior to the Commercial Operation Date (the "**Test Period**") shall not be deemed Products.

(b) The Commercial Operation Date shall occur on the date on which the Facility is substantially completed as described in Exhibit A and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Seller have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission, distribution and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;
- (iii) Seller has obtained a Statement of Qualification from the DOER pursuant to 225 CMR 14.05 qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (iv) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Agreement;
- (v) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements 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 successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (vii) Seller has satisfied all Critical Milestones that precede the Commercial Operation Date in Section 3.1;

- (viii) no Default or Event of Default by Seller shall have occurred and remain uncured;
- (ix) the Facility is under the care, custody and control of Seller.

3.5 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; (ii) the Operational Limitations; and (iii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission/Distribution Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, Scheduling, interconnection, distribution, and transmission of Energy, and the transfer of RECs), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Owner and Generator Operator" of the Facility with NERC and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all 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, at all times during the Term, construct, maintain and operate the Facility in accordance with Good Utility Practice and in accordance with Exhibit A to this Agreement. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete construction, operation and maintenance functions, so long as Seller maintains overall control over the construction, operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) Forecasts. Commencing at least thirty (30) days prior to the anticipated Commercial Operation Date and continuing throughout the Term, Seller shall update and deliver to Buyer on a monthly basis and in a form reasonably acceptable to Buyer, twelve (12) month rolling forecasts of Energy production by the Facility, which forecasts shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The provisions of this section are in addition to Seller's requirements under ISO-NE Rules and ISO-NE Practices, including ISO-NE Operating Procedure No. 5.

(f) RPS Class I Renewable Generation Unit. Seller shall be solely responsible for qualifying the Facility with the DOER as a RPS Class I Renewable Generation Unit in accordance with 225 CMR 14.05 and maintaining such Statement of Qualification throughout the Services Term; provided, however, that if the Facility ceases to qualify as a RPS

Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to maintain such Statement of Qualification after that change in Law.

(g) Compliance Reporting. Within fifteen days (15) days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to power plant emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and delivered to Buyer hereunder, 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.

(h) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage specified on Exhibit D. Within thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with a certified "true and correct" copy of such insurance policies, provisions and endorsements and a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer within thirty (30) days prior written notice of coverage modifications, and (iv) shall 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 conspicuously state that the policy is "claims made."

(i) Contacts. 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.

(j) Compliance with Law. Without limiting the generality of any other provision of this Agreement, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law.

(k) FERC Status. Seller shall maintain the Facility's status as a QF or EWG at all times after the Commercial Operation Date and shall obtain any requisite authority to sell the output of the Facility at market-based rates.

(l) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.6 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, including the costs of the Network Upgrades, consistent with all standards and requirements set forth by the FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Beginning on the Commercial Operation Date and subject to Section 4.1(b), Seller shall sell and Deliver, and Buyer shall purchase and receive, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same is unit contingent and shall be subject to the operation of the Facility.

(b) Buyer shall not be obligated to purchase any Products to the extent that such Products exceed the Contract Maximum Amount in any hour.

(c) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by the Facility, up to and including the Contract Maximum Amount, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Products or any certificate or other attribute associated with such Products to any Person other than Buyer during the Term. Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Services Term, Seller 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 the 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/Distribution Provider and caused by noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller shall at all times during the Services Term be designated as the “Lead Market Participant” (or any successor designation) for the Facility and 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.

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products hereunder in accordance with Section 4.1, and such failure is not excused under the express terms of this Agreement (a “**Delivery Shortfall**”), Seller shall pay Buyer an amount for such Delivery Shortfall equal to the Cover Damages. Such payment shall be due no later than the date for Buyer’s payment for the applicable month as set forth in Section 5.2 hereof; provided, however, that if Seller demonstrates to Buyer’s reasonable satisfaction that such Delivery Shortfall was solely the result of an administrative error by Seller, such payment shall not be due until the later of the date for Buyer’s payment for the applicable month as set forth in Section 5.2 hereof or the date that is fifteen (15) days after such Delivery Shortfall occurred. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Shortfall 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 Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.4 Failure by Buyer to Accept Delivery of Products. 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.

4.5 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 its Energy to the Delivery Point consistent with all standards and requirements set forth by the FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to and at the Delivery Point, except for small Massachusetts projects with a capacity value such that they are recognized by the ISO-NE Rules as a “load reducer”. These small Massachusetts projects are not delivering power to the Pool Transmission Facilities and shall pay energy delivery costs only to their Delivery Point.

(c) 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.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, 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 Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense once each Contract Year. 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 Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test 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.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt 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%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but 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 simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18

4.7 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to Buyer's Percentage Entitlement of the Facility's Environmental Attributes, including the RECs, generated by the Facility during the Term in accordance with the terms of this Section 4.7.

(b) All Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the RPS; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to ensure that all Energy provided by Seller to Buyer from the Facility under this Agreement meets the requirements for eligibility pursuant to the RPS after that change in Law.

(c) At Buyer's request and at Seller's sole cost, Seller shall seek qualification under the renewable portfolio standard or similar law of New York and/or one or more New England states (in addition to Massachusetts) and/or any federal renewable energy standard. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary. Seller shall also submit any information required by any state or federal agency (including without limitation the MDPU) with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard to Buyer or as directed by Buyer.

(d) Seller shall comply with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement and all other GIS Operating Rules to the extent required for Buyer to achieve the full value of the RECs. 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 compliance shall be at Seller's sole cost if such registration and compliance is requested in connection with Section 4.7(c) above and shall be at Buyer's sole cost in other instances.

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS

as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates to be Delivered hereunder to Buyer in the GIS; provided, however, that no payment shall be due to Seller for any RECs until the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing.

4.8 Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Entitlement Percentage of any Energy and RECs produced by the Facility. Notwithstanding the provisions of Section 5.1, payment for Buyer's Entitlement Percentage of all Energy and RECs produced during the Test Period shall be equal to the product of (x) Buyer's Entitlement Percentage of the MWh of Energy delivered to the Delivery Point and (y) the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month when Energy and RECs are produced by the Facility. In no event shall the Test Period extend beyond six months, except due to Force Majeure.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products. All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit E. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment for Energy and RECs during the Test Period in accordance with Section 4.8, (v) payment of any Resale Damages under Section 4.4, (vi) payment of interest on late payments under Section 5.3, (vii) payments for reimbursement of Buyer's Taxes under Section 5.4(a), (viii) return of any Credit Support under Section 6.3, and (ix) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs incurred by it in connection with the performance of its obligations under this Agreement.

5.2 Payment and Netting.

(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 the Energy Delivered in the preceding month, and any RECs deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing 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.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days from receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall 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 shall 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. 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 may discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to this Agreement, interest, and payments or credits, may be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) 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 1% per cent, and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (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 or sale 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 or imposed on or

associated with the purchase of such Products (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 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. 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 production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits or grants or any particular accounting, reporting or tax treatment during the Term.

6. SECURITY FOR PERFORMANCE

6.1 Seller’s Support.

(a) Seller shall be required to post Credit Support in the amount of [\$ _____] [\$30 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$20 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$10 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less] to secure Seller’s obligations in the period between the Effective Date and the Commercial Operation Date (“**Development Period Security**”). Fifty percent (50%) of the Development Period Security shall be provided to Buyer on the Effective Date; and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) Business Days after receipt of the Regulatory Approval. If at any time prior to the Commercial Operation Date, the amount of Development Period Security is reduced as a result of Buyer’s draw upon such Development Period Security to less than the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval, Seller shall replenish such Development Period Security to the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval within five (5) days of that draw. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer’s receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer’s receipt of the full amount of the Operating Period Security.

(b) Beginning not later than ten (10) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller’s obligations

under this Agreement after the Commercial Operation Date through and including the date that all of Seller's obligations under this Agreement are satisfied ("**Operating Period Security**"). The Operating Period Security shall be in an amount equal to [\$_____] [\$30 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 50% or more; \$20 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor more than 20% but less than 50%; and \$10 per kwh of Contract Maximum Amount if the Facility has an expected capacity factor of 20% or less]. If at any time on or after the Commercial Operation Date, the amount of Operating Period Security is reduced as a result of Buyer's draw upon such Operating Period Security, Seller shall replenish such Operating Period Security to the total amount required under this Section 6.1(b) within five (5) Business Days of that draw.

6.2 **Cash Deposits.** Any cash provided by Seller as Credit Support under this Agreement shall be held in an interest bearing deposit account selected by Buyer in its reasonable discretion. All interest accrued on that cash deposit shall 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 the Commercial Operation Date) or the Operating Period Security (after the Commercial Operation Date), such excess shall be paid to Seller promptly after Seller requests such a payment in writing delivered to Buyer. Seller agrees to comply with the commercially reasonable requirements of Buyer in connection with the receipt and retention of any cash provided as Credit Support under this Agreement.

6.3 **Return of Credit Support.** Any unused Credit Support provided under this Agreement shall be returned to the Party providing that Credit Support only after any such Credit Support has been used to satisfy any outstanding obligations of that Party in existence at the time of the expiration or termination of this Agreement. Provided such obligations have been satisfied, such Credit Support shall be returned to the Party providing it within thirty (30) days after the earlier of (a) the expiration of the Term of this Agreement or (b) termination of this Agreement under Section 8.3, Section 9.3(b) or Section 10.1(c).

7. **REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS**

7.1 **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller 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 Massachusetts. Subject to the receipt of the Regulatory Approval, 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 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 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 Regulatory Approval, 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 Regulatory Approval, 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 Regulatory Approval, 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 or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(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, reorganization, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall 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 Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is a [_____] , validly existing and in good standing under the laws of [_____]. 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 is currently engaged; (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; and (iii) holds, as of the Effective Date, or shall hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver the Products to the Buyer in accordance with this Agreement.

(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, shall 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 lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(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 on or prior to the date such Permits are required under applicable Law, 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 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. To Seller's knowledge, Seller shall be able to receive the Permits listed in Exhibit B in due course and as required under applicable Law to the extent that those Permits have not previously been received.

(g) New RPS Class I Renewable Generation Unit. The Facility shall be RPS Class I Renewable Generation Unit, qualified by the DOER as eligible to participate in the RPS

program, under Section 11F of Chapter 25A (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a commercial operation date, as verified by the DOER, on or after January 1, 2008.

(h) Title to Products. Seller has and shall 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. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under this Agreement.

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

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

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

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.1, Section 6.2, Section 8.2, Section 8.3 and Section 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion.

8.2 Filing for Regulatory Approval. Buyer shall use commercially reasonable efforts to (i) file an application for the Regulatory Approval with the MDPU by not later than [_____] [30 days from Effective Date] and (ii) at Buyer's sole discretion, exercise commercially reasonable efforts to obtain the Regulatory Approval, including using commercially reasonable efforts to obtain a favorable resolution in any appeal of an order of the MDPU with respect to this Agreement. Seller shall use commercially reasonable efforts to cooperate with Buyer in obtaining the Regulatory Approval.

8.3 Failure to Obtain Regulatory Approval. If Buyer (i) on any date notifies Seller that it has received an order of the MDPU regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion or (ii) has not notified Seller that it has received the Regulatory Approval by [_____] [300 days from Effective Date], either Party may terminate this Agreement within 30 days after such date by delivery of written notice to the other Party in accordance with Section 17. Upon such termination, neither Party shall have any further liability hereunder except for any obligations arising under Sections 6.3 and 12 which accrued prior to such termination.

9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. It shall constitute an event of default (“**Event of Default**”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Agreement, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; 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 ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Other Covenants. Other than a Delivery Shortfall (the sole remedy for which shall be the payment of Cover Damages under Section 4.3), a Rejected Purchase (the sole remedy for which shall be the payment of Resale Damages under 4.4), or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 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 for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period and provided that corrective action has been taken by the Defaulting Party within such thirty (30) day period and so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event within one hundred fifty (150) days; 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 or liquidator or 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 or liquidator or 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 obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Agreement.

9.2 Events of Default by Seller. In addition to the Events of Default described in Section 9.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Maintain Credit Support. The failure of Seller to provide, maintain and/or replenish the Development Period Security or the Operating Period Security as required pursuant to Article 6 of this Agreement, and such failure continues for more than five (5) Business Days after Buyer has provided written notice thereof to Seller; or

(c) Energy Output. During the Services Term, the Facility's Energy output is (A) below [_____ percent (___%)] of the Projected Annual Energy Output for a period of two consecutive Contract Years for a reason other than a Force Majeure, or (B) below [_____ percent (___%)] of the Projected Annual Energy Output for a period of two consecutive Contract Years for any reason, including due in whole or in part to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under this Agreement or on Buyer or Buyer's ability to receive the benefits under this Agreement, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Agreement, Seller may cure such failure within thirty (30) days of its occurrence; or

(e) Failure to Meet Critical Milestones. The failure of Seller to satisfy any Critical Milestone by the date set forth therefor in Section 3.1(a), as the same may be extended in accordance with Section 3.1(c).

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, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement or, to the extent not inconsistent with the terms of this Agreement, 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.

(b) Termination and Termination Payment. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate this Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If the Non-Defaulting Party terminates this Agreement, 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 Buyer Prior to Commercial Operation Date.*

If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the undrawn amount of any Development Period Security provided to Buyer by Seller.

(ii) *Termination by Seller Prior to Commercial Operation Date.*

If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs by the date set forth therefor in Section 3.1(a) (as the same may be extended in accordance with Section 3.1(c)) or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Agreement. In such case, the Termination Payment due to Seller shall be calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.

(iii) *Termination by Buyer On or After Commercial Operation Date.*

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

$$\sum_N (RV - CV) + P$$

where:

" \sum_N " is the summation over the remainder of the Services Term.

"RV" is the replacement value of the Products for the remainder of the Services Term, calculated with reference to the applicable Replacement Price and the Supply Forecast, using a discount factor of [] percent.

“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 , using a discount factor of [] percent (the “**Contract Value**”).

“P” is the amount of any applicable penalties and costs incurred by Buyer in replacing the Products not Delivered to Buyer as a result of the termination of this Agreement.

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

(iv) *Termination by Seller On or After Commercial Operation*

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

$$\sum_N [(CV - MV) + P]$$

where:

“ \sum_N ” is the summation over the remainder of the Services Term.

“CV” is the Contract Value.

“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, using a discount factor of [] percent.

“P” is the amount of any applicable penalties and 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)(iv).

(v) *Supply Forecast.* For purposes of determining the Termination Payment on or after the Commercial Operation Date pursuant to this Section 9.3, the quantity of Products to be delivered shall be based upon the Projected Annual Energy Output (the “**Supply Forecast**”).

(vi) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to an Event of Default 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.* The Defaulting Party shall make the Termination Payment within ten (10) Business Days after such notice is effective. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment as calculated by the Non-Defaulting Party. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(viii) *Use and Return of Credit Support.* In the event that the Defaulting Party fails to pay the Termination Payment in full within the time period set forth in Section 9.3(b)(vii), the Non-Defaulting Party may draw upon any Credit Support provided by the Defaulting Party to satisfy the unpaid portion of the Termination Payment. Upon the payment of the Termination Payment in full, any undrawn Credit Support shall be promptly returned to each Party providing that Credit Support.

(ix) *Reinstatement of Agreement.* In the event that Buyer terminates this Agreement prior to the Commercial Operation Date pursuant to Section 9.3(b)(i) and Seller thereafter achieves the Commercial Operation Date within one (1) year after such termination, Buyer may elect to reinstate this Agreement in accordance with its terms by providing Seller with at least six (6) months' prior written notice of such reinstatement. Upon such reinstatement, Buyer shall return to Seller any Termination Payment made by Seller, together with interest accruing at the Late Payment Rate, on or prior to the date selected for reinstatement of this Agreement.

(c) Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any Termination Payment payable as a result of any early termination of this Agreement.

(d) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under this Section 9 to one, but not more than one, Lender of which Buyer shall have written notice, and Buyer shall afford such Lender the same opportunities to cure Defaults under this Agreement as are provided to Buyer hereunder.

(e) 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; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (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 a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) Subject to Section 9.2(c), if either Party is unable, wholly or in part, by Force Majeure to perform 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. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the

effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of 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 the Force Majeure prevents full or partial performance under this Agreement for a period of twelve (12) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement upon written notice to the other Party and without further recourse.

(d) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission/Distribution Provider unless (i) such Party has contracted for firm transmission with a Transmission/Distribution 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/Distribution 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.

11. DISPUTE RESOLUTION

[**OPTION 1:** 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 Commonwealth of Massachusetts. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE.]

[**OPTION 2:**

11.1 Negotiation Between Executives. 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 good faith to resolve such Dispute promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive (“**Initial Notice**”). Within five (5) Business Days after delivery of the Initial Notice, the

receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2 Mediation. If the Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within fifteen (15) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the Dispute by mediation under the then current International Institute for Conflict Prevention & Resolution ("**CPR**") Mediation Procedure; however, in the case of Disputes that are or may be subject to FERC's jurisdiction over wholesale power contracts, then either Party may elect to proceed with the mediation through the FERC's Dispute Resolution Service; provided, however, that if one Party fails to participate in the negotiations as provided in Section 11.1, the other Party can initiate mediation prior to the expiration of the thirty (30) Business Days. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals or FERC panel, as appropriate.

11.3 Arbitration. Any Dispute which has not been resolved by one of the non-binding procedures set forth in Sections 11.1 and 11.2 within fifty (50) Business Days of the delivery of the Initial Notice, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration (the "**Rules**") by a sole arbitrator, for Disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for Disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4; however, in the case of Disputes that are or may be subject to FERC's jurisdiction over wholesale power contracts, then either Party may elect to proceed with binding arbitration through the FERC's Dispute Resolution Service; provided, however, that if either Party does not participate in one of the non-binding procedures set forth in Sections 11.1 and 11.2, then the other Party may initiate binding arbitration under this Section 11.3 prior to the expiration of the fifty (50) Business Day period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Boston, Massachusetts. Notwithstanding anything to the contrary in the Rules, the arbitrators may only appoint a neutral expert with the prior written consent of all the Parties.

11.4 Allocation of Dispute Costs. The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of Disputes. To the fullest

extent permitted by law, any mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

11.5 Waiver Of Jury Trial. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.]

[Preferred option to be determined by Buyer in negotiations with Seller]

12. CONFIDENTIALITY

12.1 Nondisclosure. Buyer and Seller each agrees not to disclose to any Person and to keep confidential, and to cause and instruct its Affiliates, 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, and any information relating to the Products to be supplied by Seller hereunder, and such other non-public information that is designated 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 Regulatory Approval or to seek rate recovery for amounts expended by Buyer under this Agreement;

(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 and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

(d) in order to comply with any rule or regulation of ISO-NE, 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. 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 Public Statements. No public statement, press release or other voluntary publication regarding this Agreement or the transactions to be made hereunder shall be made or issued without the prior consent of the other Party.

13. INDEMNIFICATION

Except as set forth in Sections 3.5(j) and 3.6(b), neither Party shall indemnify, defend or hold harmless the other Party or its partners, shareholders, directors, officers, employees or agents from and against any liabilities, damages, losses, penalties, claims, demands, suits or proceedings claimed by, due to or instituted by any third party as a result of either Party's execution, delivery or performance of this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Section 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.

14.2 Permitted Assignment by Seller. 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 (including the provisions included in Section 9.3(d)); provided, however, that Buyer shall not be obligated to enter into any consent which shall 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.

14.3 Change in Control over Seller. Buyer's consent shall be required for any change in Control over Seller, which consent shall not be unreasonably withheld, conditioned or delayed and shall be provided if Buyer reasonably determines that such change in Control does not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement.

14.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with any merger or consolidation of the Buyer with or into another Person or any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property or 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 so long as in the case of either clause (a) or clause (b) of this Section 14.4, either (1) the proposed assignee's credit rating is at least either BBB- from S&P or Baa3 from Moody's

or (2) the proposed assignee's credit rating is equal to or better than that of Buyer at the time of the proposed assignment, or (3) such assignment, or in the case of clause (a) above the transaction associated with such assignment, has been approved by the MDPU.

14.5 Prohibited Assignments. Any purported assignment of this Agreement not in compliance with the provisions of this Section 14 shall be null and void.

15. TITLE; RISK OF LOSS

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. Seller warrants that it shall deliver to Buyer the Products free and clear of all claims therein or thereto by any Person.

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. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall 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 treated as confidential except that such information may be disclosed for financial statement purposes.

17. NOTICES

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: []

With a copy to: []

If to Seller: []

With a copy to: []

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 MDPU approval or filing, and if Buyer determines that MDPU 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 MDPU approval is obtained or such MDPU 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 Commonwealth of Massachusetts (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 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Serv. Co., 350 U.S. 332 (1956) and Federal Power Comm’n v. Sierra Pac. Power Co., 350 U.S. 348 (1956). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

19.5 Change in ISO-NE Rules and 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.

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, 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.

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.

[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.

[Buyer]

By: _____
Name:
Title:

[Seller]

By: _____
Name:
Title:

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: [Describe fully, including the location (street address and county or if there is none, longitude and latitude), the technology, fuel type, Operational Limitations, Delivery Point and criteria for substantial completion of the Facility as specified by Seller in its response to the RFP.]

EXHIBIT B

SELLER'S CRITICAL MILESTONES PERMITS AND REAL ESTATE RIGHTS

Part 1 – Permits

- a. Construction Permits
[to be completed]

- b. Operating Permits
[to be completed]

Part 2 – Real Estate Rights

[to be completed]

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 result in delays in Commercial Operation:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation:

EXHIBIT D

INSURANCE

Note: Each Distribution Company will provide its own insurance requirements for this Exhibit.

EXHIBIT E
PRODUCTS AND PRICING

PROJECT INFORMATION SUMMARY

(see Section 2 of Bidder Response Forms)

Bidder Name	_____
Project Name	_____
Technology	_____
Planned Commercial Operation Date	_____
Products Bid (mark "x" next to products proposed)	_____
Energy	_____
RECs	_____
Capacity	_____
Project Site	_____
Proposed Point of Delivery	_____
Installed capacity (MW)	_____
Contract Maximum Amount (kWh per hour)	_____
Proposal is submitted to (mark "x" next to applicable companies)	_____
Unitil	_____
National Grid	_____
NSTAR	_____
WMECO	_____
Maximum % entitlement, if any, associated with your proposal to any Distribution Company	_____
No limitation (if applicable)	_____
Unitil	_____
National Grid	_____
NSTAR	_____
WMECO	_____

PRICING SCHEDULE--EXCEL FORMAT

(See Section 4 of Bidder Response Forms)

Contract Year	Annual Contract Energy to be Delivered to the Buyer at the Point of Delivery (MWh)		Energy Price (\$/MWh)		Escalation Rate to be Applied, If Applicable	REC Price (\$/REC)
	On-Peak	Off-Peak	On-Peak	Off-Peak		
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

Notes: On-Peak is defined as hours ending 8 though 23 Monday through Friday, excluding NERC holidays. Off-Peak is defined as all other hours.

Escalation rate: If the proposed escalation rate is not fixed, specify below the publicly available, inflation related index to be used. Specify the base to be used for the index and how it would be applied to adjust the Energy Price (On-Peak and Off-Peak, as applicable) and what portion of the Energy Price would be adjusted.

CAPACITY BID (OPTIONAL)

(See Section 5.1 and Section 4, note 2 of Bidder Response Package)

Commitment Period (June 1-May 31)	Summer (June-September) (kW-month)	Winter (October -May) (kW-month)	Bid Price (\$/kW month)

Note: See instructions at Section 5.1, note 6 and Section 4, note 2 of Bidder Response Forms.

EXPECTED ON-PEAK AND OFF-PEAK MONTHLY PRODUCTION

(See Section 5.1 of Bidder Response Forms)

Month	On-Peak (MWh/month)	Off-Peak (MWh/month)	Total (MWh/month)
January			0
February			0
March			0
April			0
May			0
June			0
July			0
August			0
September			0
August			0
September			0
October			0
November			0
December			0
Total	0	0	0

Annual degradation rate (if any) and basis for it: _____

Note: Information provided in this worksheet should correlate with information provided in Energy and REC Prices worksheet, Columns B and C.

If level of generation is expected to vary over the term of the PPA, the bidder should provide an expanded table for the life of the PPA.

ESTIMATE OF AVERAGE NET HOURLY ENERGY PRODU

For all Projects--in MWh

(See Section 6 of Bidder Response Forms)

	January	February	March	April	May	June	July	August
Hour Ending								
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
Total	0	0	0	0	0	0	0	0

Note: MWh should correlate with MWh estimates in Peak + Off-Peak Monthly Energy worksheet :

RFP FOR LONG-TERM CONTRACTS
UNDER SECTION 83 OF THE MASSACHUSETTS GREEN COMMUNITIES ACT

Distribution Companies: Fitchburg Gas & Electric Company d/b/a Unitil (“Unitil”)
Massachusetts Electric Company and Nantucket Electric Company
d/b/a/ National Grid (“National Grid”)
NSTAR Electric Company
Western Massachusetts Electric Company

In consultation with the Massachusetts Department of Energy (“DOER”)

Collectively, DOER and the Distribution Companies are the “Soliciting Participants.”

INSTRUCTION SHEET

January 15, 2010

I. Bid Due Date

As provided in Sections 3.1 and 3.4 of the Request for Proposals (“RFP”) issued by the Distribution Companies on January 15, 2010, in consultation with DOER, bids are due on February 19, 2010 by 5:00 p.m. eastern prevailing time.

II. Bidders Conference

In accordance with Sections 3.1 and 3.2 of the RFP, a Bidders Conference will be held on January 29, 2010 at 2:00 pm Eastern Standard Time at 100 Cambridge Street, Boston, Massachusetts, 02114, 2nd floor, Conference Rooms C and D.

III. Process and Timing for Submitting Questions; Posting of Answers

Questions may be submitted to any or all of the Soliciting Participants, including DOER. When submitting questions, please identify the Soliciting Participant or Participants from which you are requesting a response. As a general matter, the Distribution Companies will be responsible for responding to questions addressed to them pertaining to interpretation of the RFP and implementation of the RFP, while DOER will be responsible for responding to questions addressed to it pertaining to matters associated with its regulatory authority as it may relate to the RFP. Where questions are addressed to more than one Distribution Company, the Distribution Companies may respond to the question separately or they may post a common response.

Questions must be posted on the website on the Submit Questions link in accordance with Section 1.5 of the RFP. In addition, the questions must be submitted by email to James.Demetrio@state.ma.us with copies to those persons identified for receipt of questions at the email addresses specified in Section 3.5 of the RFP.

As set forth in Section 3.1 of the RFP, the deadline for submission of questions is February 3, 2010. In order to facilitate a prompt response and to improve the quality of the Bidders Conference on January 29, 2010, bidders are requested to post (and email) questions on or by January 22, 2010. The Soliciting Participants will endeavor to answer such questions prior to or at the Bidders Conference on January 29, 2010. As set forth in Section 3.2 of the RFP, only written answers that are provided in response to written questions will be official responses.

The Soliciting Participants will endeavor to answer promptly all questions timely and properly submitted, with the objective of answering all such questions no later than February 12, 2010, one week before bids are due. Consistent with Section 3.2 of the RFP, both the questions and written responses will be posted at Questions and Answers without identifying the person that asked the question.

IV. Notice of Intent to Bid

Prospective bidders are encouraged to submit a Notice of Intent to Bid form on or by February 3, 2010, as provided in Sections 3.1 and 3.2 of the RFP. The Notice of Intent to Bid form is attached as Appendix A to the RFP. As set forth in Appendix A, the Notice of Intent to Bid form should be sent by mail and by email to the addressees for the Distribution Companies (as set forth in Section 3.5 of the RFP) for which a prospective bidder intends to submit a bid. The Soliciting Participants will provide any updates by email regarding the RFP to prospective bidders who submit a Notice of Intent to Bid.

V. Submittal of Bids

As set forth in Section 3.4 of the RFP, bidders must submit one original and two bound copies of their proposal as well as two CDs with the entire contents of the proposal to the Official Contact for each Distribution Company that is intended to be the recipient of a proposal. The addresses and telephone numbers of the Official Contacts are set forth in Section 3.5 of the RFP. Bids must be submitted by 5:00 p.m. prevailing time on February 19, 2010.

COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF ENERGY RESOURCES
ON THE MODEL POWER PURCHASE AGREEMENT

Section 83 of Chapter 169 of the Acts of 2008 (“Section 83”) provides that investor-owned electric distribution companies are to solicit proposals from renewable energy developers for the purpose of entering into long-term contracts “to facilitate the financing of renewable energy generation” projects sited in Massachusetts or in adjacent federal waters. Beginning in June 2009, the Commonwealth’s four investor-owned electric distribution companies (“Distribution Companies”) and the Massachusetts Department of Energy Resources (“DOER”) embarked on a mission to develop a single statewide solicitation for renewable energy projects to comply with Section 83.

On August 10, 2009, a set of draft documents that included a Request for Proposals, Bidder Forms and a Term Sheet were circulated by the Distribution Companies and DOER (the “Soliciting Participants”) to over 300 potential interested parties for their comments. On September 14, 2009, the Distribution Companies and DOER filed a request to the Massachusetts Department of Public Utilities (“MDPU”) for approval of a solicitation process and timetable. That filing included the Request for Proposals and Bidder Forms, which had been modified and clarified in certain respects from the draft documents in consideration of comments that had been submitted by interested parties. However, the filing did not include a term sheet or Model Power Purchase Agreement (“Model PPA”). The RFP indicated that the parties were working on developing a Model PPA that would be included as part of the formal solicitation. Specifically, the Soliciting Participants stated:

There were a number of comments pertaining to the term sheet attached to the draft RFP. The Soliciting Participants are in the process of preparing a Model PPA and will evaluate the comments submitted in that context. It is a major objective of the Soliciting Participants that the Model PPA be a document that would allow project developers to finance their projects. Another major objective is to protect the legitimate interests of the Distribution Companies and their ratepayers consistent with commercial reasonableness and industry standards. Following MDPU approval of the Soliciting Participants’ request, the RFP will be issued with a Model PPA. Bidders will have the right to submit counterproposals with respect to provisions with which they do not agree.¹

It was DOER’s view that the purpose and benefit of distributing a term sheet for comments was to insure critical issues were addressed in a manner that was consistent with industry practice for these types of solicitations and would form a reasonable basis for a project to obtain financing in a commercially reasonable manner. It was also DOER’s expectation that the Model PPA developed would be based on the Term Sheet as

¹ Request for Approval of Timetable and Method for Solicitation and Execution of Long-Term Contracts for Renewable Energy, Attachment p. 3, Docket No. 09-77.

modified to reflect comments received from various parties considered appropriate for incorporation into the Model PPA.

While the resulting Model PPA is largely consistent with this expectation, there are certain provisions in the Model PPA that, in DOER's view, vary from this expectation. Consequently, DOER is not endorsing the totality of this Model PPA, and highlights below where it believes there are variations from the Term Sheet that warrant specific identification and comment. DOER also notes, however, that the principal purpose of the Model PPA is to expedite the negotiation process rather than to represent a final agreement. DOER fully expects, therefore, that there will be an opportunity to negotiate changes to the Model PPA, and to the extent reasonable changes are proposed, the Distribution Companies will engage in good faith negotiations with selected bidders.

Particular Provisions of Interest

1. Permitted Assignment by Buyer

The Term Sheet provided that under certain defined circumstances the Buyer could assign the Power Purchase Agreement ("PPA") without the consent of the Seller.² Section 14.4 of the Model PPA goes substantially further in giving Buyer the right to assign the PPA without Seller's consent than was set forth in the Term Sheet. Specifically, in the case of a merger or consolidation or sale of substantially all of assets of the Buyer, the Term Sheet provided for a permitted assignment as long as the assignee has a credit rating of (A) BBB or better OR (B) is equal to that of Buyer at the time of assignment. Under the Model PPA, Buyer may assign the PPA without Seller consent if the assignee has a credit rating of (A) BBB- (a lower credit rating than in the Term Sheet) or (B) the same rating as the assignor or (C) the transaction has been approved by the MDPU. In the case of an assignment not involving a merger/consolidation (e.g., to an affiliate), Buyer may assign to any subsequent purchaser if the proposed assignee's credit rating is the lower of (A) at least BBB- OR (B) is equal to that of Buyer at the time of the proposed assignment. The Term Sheet only allowed a permitted assignment where the assignee has an equal or better credit rating than the assignor.

² Buyer shall have the right to assign the PPA without consent of Seller (1) in connection with any merger or consolidation of the Buyer with or into another entity or any exchange of all of the common stock or other equity interests of the Buyer or the Buyer's parent for cash, securities or other property or 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, the Buyer, provided that the proposed assignee's credit rating as established by Standard & Poor's or Moody's Investors Service either (a) is equal to or better than BBB from Standard & Poor's or Baa2 from Moody's Investors Service or (b) is equal to or better than that of Buyer at the time of the proposed assignment, or (2) to any substitute purchaser so long as the proposed assignee's credit rating as established by Standard & Poor's or Moody's Investors Service is equal or better than that of Buyer at the time of the proposed assignment.

The Model PPA provisions are decidedly non-standard in terms of long-term PPAs for renewable energy projects.³ Typically, a Buyer's ability to assign its rights and obligations under a PPA without the Seller's consent is much more limited than in the Model PPA. Moreover, the provisions raise concern regarding the impact on Sellers.

First, inclusion of the provision that allows assignment in the event of a merger or consolidation if approved by the MDPU has the effect of eliminating any credit quality requirements, which may raise material issues from the perspective of potential investors and lenders. Second, BBB- is the lowest investment grade rating, and for long-term power sales contracts where the buyer has no obligation to provide credit support in the event of a downgrade, BBB is the standard ordinarily used by the investment community, as we understand it. In light of today's credit market conditions, lenders may be even more skeptical than usual of companies that are marginally investment grade in the context of contracts of this type. Finally, we are not comfortable with loosening the requirements applicable to a permitted assignment to "any substitute purchaser" without seller's consent (compared to what was in the Term Sheet) since it has been expressed to us that even with the Term Sheet provision there is already some concern that the contract could potentially be assigned to an unregulated entity, which would entail greater risk from the perspective of a lender/investor.

2. Periods to Cure Seller Defaults Prior to Buyer Termination

A number of developers commented that for certain events of default occurring after financing, construction and commercial operation, the Term Sheet did not provide cure periods or, where cure periods were provided, such periods were inadequate before the Buyer could terminate the PPA. While the Model PPA incorporated cure periods and somewhat longer cure periods for events of default than were provided in the Term Sheet in consideration of the comments submitted (e.g., Section 9.1(c)), in other respects the Model PPA provisions have the effect of reducing the cure periods or eliminating them altogether.

While under the Term Sheet, a Seller would have a reasonable period of time to reinstate a permit that has been revoked, suspended or has expired before Buyer could terminate the PPA,⁴ there is no cure period in the Model PPA (Sections 9.1(c) and 9.1(e)) in the event of such revocation, suspension or expiration of a required permit.

While the Model PPA (Section 9.1(c)) provides for a general cure period of up to 150 days for events of default (other than those treated

³ Another example of a non-standard provision is the one-way indemnification provisions in the Model PPA (Sections 13, 3.5(j) and 3.6(b)).

⁴ Term Sheet p. 11.

separately), the introduction of a “no default” continuing representation and warranty in Section 7.2(k) with only a 30 day cure period (Section 9.1(a)) may have the effect of undercutting the longer cure period set forth in Section 9.1(c).

3. Delay Damages, Replenishment Obligation and Remedies

The Term Sheet provided specific provisions regarding the Seller’s ability to post additional security to extend the critical milestone dates, including the commercial operation date, payment of delay damages (for tardy performance), and a limited Seller obligation to replenish the Development Period Security to the extent the Seller did not pay the liquidated damages and Buyer drew on the Development Period Security.

“If Seller fails to pay Delay Damages when due, Buyer may retain the cash deposit or draw upon the letter of credit for payment of such Delay Damages, as applicable. Seller has the obligation of replenishing the amount of Development Period Security but only if and when such Development Period Security becomes less than the original amount posted following MDPU approval of the PPA.”⁵

The Model PPA provisions (Sections 3.2(c) and 6.1(a)) are generally consistent with the Term Sheet’s provisions, except in one important respect. Section 3.2(c) provides that in the event Seller fails to pay delay damages when due, Buyer may draw on the Development Period Security AND declare Seller to be in default and terminate the PPA. In our view, this approach is inconsistent with the Term Sheet for the following reasons: (a) drawing upon the Development Period Security cures the failure to pay the liquidated damages; (b) if Seller has the obligation to replenish the Development Period Security and fails to do so, that is an event of default warranting termination of the PPA; and (c) if Seller has no obligation to replenish the Development Period Security—which would be the case if Seller has posted additional security to extend the critical milestone dates and the amount of security remaining after Buyer draws upon it to pay the delay damages exceeds the original amount posted, then there would be no event of default for failing to replenish. The purpose of limiting the replenishment obligation in the Term Sheet was to limit Seller’s development period liability, which is undercut by making any failure to pay liquidated damages, regardless of whether Development Period Security is drawn upon to satisfy it, an event of default.

DOER is highlighting these issues because they represent, in our view, material changes to the Term Sheet that may place greater risk on a project. The Model PPA, however, provides an adequate basis for soliciting and evaluating bids with respect to this RFP.

⁵ Term Sheet p. 6.



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 09-77

December 29, 2009

Joint Petition by Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Western Massachusetts Electric Company, and the Commonwealth of Massachusetts Department of Energy Resources for approval of proposed timetable and methods for the solicitation and execution of long-term contracts for renewable energy, pursuant to St. 2008, c. 169, § 83.

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D.P.U. 09-77

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I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires each electric distribution company, beginning July 1, 2009, to twice in a five-year period solicit proposals from renewable energy developers. St. 2008, c. 169, § 83 (“Section 83”). Distribution companies may also voluntarily solicit additional proposals over the five-year period. The electric distribution company shall select a reasonable method of soliciting proposals from renewable energy developers, which may include public solicitations, individual negotiations or other methods. Pursuant to Section 83, the timetable and method for solicitation and execution of such contracts shall be proposed by the electric distribution company in consultation with the Commonwealth of Massachusetts Department of Energy Resources (“DOER”) and is subject to review and approval by the Department of Public Utilities (“Department”). On June 12, 2009, the Department promulgated regulations, 220 C.M.R. § 17.00 et seq., to implement the provisions of Section 83. Long-Term Contracts for Renewable Energy, D.P.U. 08-88-A (2009).

On September 14, 2009, Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Western Massachusetts Electric Company (together, “electric distribution companies”), and DOER (together, “Petitioners”) jointly filed a request for approval of a proposed timetable and method for soliciting proposals for renewable energy through a public request for proposals (“RFP”) process. This matter was docketed as D.P.U. 09-77. The Department requested comments from interested persons. Initial

comments (“Comments”) were filed on October 9, 2009,¹ and reply comments (“Reply Comments”) were filed on October 16, 2009.²

II. SUMMARY OF THE PETITION

A. Introduction

The Petitioners seek approval of an RFP which includes a proposed timetable and method for solicitation and execution of contracts to be used as one of the two solicitations required by Section 83. The electric distribution companies propose to conduct a competitive solicitation in consultation with DOER to secure bids from generation sources that meet the requirements of Section 83 and 220 C.M.R. § 17.00 et seq. The electric distribution companies propose to solicit bids for renewable energy and renewable energy certificates (“RECs”) for approximately 1.5 percent of their total annual load for a period of ten to 15 years. At the conclusion of the solicitation process, each distribution company will submit final contracts for Department approval, pursuant to Section 83 and 220 C.M.R. § 17.05.

B. Bid Evaluation Process

The proposed RFP sets out a three-stage bid evaluation process (RFP Section 2.1). The first stage identifies bidders that have satisfied certain eligibility and threshold requirements

¹ Initial comments were submitted by the following twelve entities: A.D. Makepeace; Boston & New England Maritime Trades Council, AFL-CIO (“AFL-CIO”); Alliance to Protect Nantucket Sound (“APNS”); Ansar Energy, LLC (“Ansar”); the Attorney General of the Commonwealth (“Attorney General”); Cape Light Compact; Conectiv Energy Supply, Inc. (“Conectiv”); Conservation Law Foundation (“CLF”); Consolidated Edison Development, Inc. (“Consolidated Edison”); Madera Energy, Inc. (“Madera”); and New England Clean Energy Council (“NECEC”).

² Reply comments were submitted by: APNS; Attorney General; CLF; DOER; and jointly by the electric distribution companies.

(id. § 2.2). To be eligible, facilities must: (1) be qualified by DOER as renewable portfolio standards (“RPS”) Class I Renewable Generation Units (“RPS Class I Units”) pursuant to G.L. c. 25A, § 11F and 225 C.M.R. § 14.02; (2) come into operation on or after January 1, 2008;³ and (3) be located within the jurisdictional boundaries of the Commonwealth (id. § 2.2.2.2).⁴ Bids that meet the eligibility requirements would be evaluated to determine whether they comply with threshold requirements which, according to the Petitioners, are intended to screen out proposals that may: (1) be less mature, in terms of project development; (2) lack technical viability; (3) impose unacceptable financial accounting consequences for the electric distribution companies; (4) do not satisfy Section 83 requirements; (5) do not comply with RFP requirements pertaining to credit support, or (6) fail to satisfy minimum standards for bidder experience and ability to finance the proposed project (id. § 2.2.3).

The second stage of the bid evaluation process ranks bids based on specified weights given to price and non-price factors. Specifically, the Petitioners propose to assign 80 percent weighting to price factors and assign 20 percent weighting to non-price factors (id. § 2.3.1). Price evaluation will compare the total cost of the products bid (i.e., energy and RECs) to the

³ Specifically, facilities must either: (1) have a commercial operation date on or after January 1, 2008; or (2) represent a capacity expansion of an existing generation facility or a repowering of an existing generation facility where the capacity expansion or repowering has a commercial operation date on or after January 1, 2008, provided that only the energy and RECs (and capacity) associated with the incremental expansion or repowering will be eligible for sale (RFP Section 2.2.2.2, citing 225 C.M.R. § 14.02).

⁴ For this purpose, within the Commonwealth means within state waters, or in adjacent federal waters, as well as a transmission line that makes landfall within the jurisdictional boundaries of the Commonwealth (id., citing Section 83).

estimated market value of these products, factoring in the production profile and location of the proposed project over the duration of the bid (id.). Non-price factors will include the following: (1) siting and permitting; (2) project development status and operational viability; (3) experience and capabilities of the bidder and the project development team; (4) financing; and (5) exceptions to the model power purchase agreement (“Model PPA”)⁵ (id. § 2.3.2).

Finally, the third stage of the bid evaluation process allows each electric distribution company to employ its discretion in the final selection of bids (id. § 2.4). The third stage considers criteria for job creation but the value assigned to this consideration would be left up to each electric distribution company at its discretion (id.).

C. Bids and Contract Requirements

The proposed schedule for the bidding process is set forth in Table 1, below (id. § 3.1).

⁵ The Petitioners have stated that, upon Department approval of the RFP, the electric distribution companies, in consultation with DOER, will issue the RFP along with bidder forms and a Model PPA that would serve as the framework for company-specific PPAs (Petitioners Letter at 2). However, the Petitioners have also stated that each electric distribution company will retain the discretion to enter into a PPA based on whether the bids submitted and subsequent negotiations meet its own internal requirements for contract execution and administration (id.). The electric distribution companies have not filed the Model PPA with the Department (Distribution Companies Reply Comments at 2).

Table 1

Event	Anticipated Date⁶
Issue RFP	Day 0
Bidders Conference	Day 14
Submit Notice of Intent to Bid	Day 17
Deadline for Submission of Questions	Day 17
Due Date for Submission of Proposals	Day 35
Selection of Short-Listed Bidders	Day 110 [75 days after bid submission]
Negotiate and Execute Contracts	Day 155 [120 days after bid submission]
Submit Contracts for Department Approval	Day 185 [150 days after bid submission]

The proposed RFP requires that bidders submit proposals for the sale of products from a facility (1) for a term of between ten and 15 years, at the bidder’s discretion (id. § 2.2.2.4), and (2) in quantities equal or greater than one megawatt (“MW”) (id. § 2.2.2.5). A bidder may bid the entire production or any portion of the production of energy and RECs from its facility (id.).⁷ The proposed RFP specifies no maximum contract size but the electric distribution companies’ stated objective is to procure approximately 1.5 percent of their respective distribution loads through this process (id.; Petitioners Letter at 2).

Section 2.2.3.2 of the proposed RFP provides that eligible bidders must provide a reasonable schedule that provides for both: (1) the closing of construction financing and commencement of construction on or by December 31, 2011; and (2) a commercial operation date on or before December 31, 2014. The structure of the contract would be both

⁶ Anticipated Date refers to the anticipated number of days from the date of issuance of the RFP.

⁷ Bids for the sale of capacity will be considered but if a bid includes capacity, the bidder must specify, in accordance with the guidelines set forth in the RFP, the terms and conditions upon which the sale of capacity would be made to one or more of the electric distribution companies (id. § 2.2.2.3).

unit-specific and unit-contingent (RFP Section 2.2.2.3). The RFP requires bidders to provide firm pricing for 120 days (id. § 2.2.4.1).

III. ISSUES RAISED BY COMMENTERS

A. Introduction

Ansar, DOER, and CLF recommend that the Department expeditiously approve the petition in order to further economic development in Massachusetts and to avoid jeopardizing the eligibility of projects for the federal grants (Ansar Comments 2; DOER Reply Comments at 4; CLF Reply Comments at 2).⁸ However, commenters raised a variety of issues regarding the proposed (1) bid evaluation process, including limitations on contract duration and bid size, (2) solicitation timetable, and (3) Model PPA.⁹

B. Bid Evaluation Process

1. Contract Duration/Size of Bids

Cape Wind, NECEC, and CLF assert that the RFP should not preclude consideration of contracts with a term of longer than 15 years (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10). Additionally, Cape Wind, NECEC, CLF, Madera, and APNS

⁸ The American Recovery and Reinvestment Act of 2009 provides for cash grants of up to 30 percent of the cost of developing certain energy projects which are placed in service by a specified date. The amount of the cash grant and the in-service requirements vary by the type of energy project. A wind facility over 100 kilowatts must be placed in service by December 31, 2012. Other renewable technologies have later in-service dates. In addition, to qualify for a cash grant, a project must begin construction by December 31, 2010 (Petitioners Letter at 4).

⁹ Several issues raised by commenters were related to costs and cost recovery issues, which are outside of the scope of this proceeding to review and approve the timetable and method for solicitation and execution of contracts pursuant to Section 83 of the Green Communities Act. Therefore, these comments will not be summarized or addressed here.

argue that the RFP should not preclude consideration of proposals for contract volumes in excess of 1.5 percent of annual distribution load, with the actual amount to be procured depending upon the electric distribution company's assessment of proposals being submitted (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10; Madera Comments at 2-3; APNS Comments at 3). These commenters claim that: (1) Section 83 does not prohibit consideration of amounts greater than three percent of a distribution company's load; (2) an electric distribution company's need to manage its distribution system and maintain service reliability is consistent with the goal of providing price certainty over the long term; and (3) some projects may benefit from contracts for more than 1.5 percent of an electric distribution company's load and, therefore, will be able to offer more favorable terms to purchasers (Cape Wind Comments at 9; NECEC Comments at 5; CLF Comments at 10; Madera Comments at 2-3).

By contrast, the electric distribution companies state that Section 83 defines a long-term contract as a contract with a term of ten to 15 years (Electric Distribution Companies Reply Comments at 5). The electric distribution companies contend that there is nothing in Section 83 to suggest that the Legislature intended the specified period of ten to 15 years to be a floor rather than a ceiling (id.). Accordingly, the electric distribution companies argue that the Department does not have the authority to require a longer contract term (id.). On the issue of supply, the electric distribution companies assert that the stated objective of soliciting 1.5 percent of distribution load is a guideline for this RFP, as the first solicitation pursuant to Section 83, and is not an express limit (id.).

2. Eligibility and Threshold Requirements

Several commenters expressed concern regarding the Petitioners' proposal to consider eligible all facilities that are qualified by DOER as RPS Class I Renewable Generation Units. NECEC and CLF assert that this may result in the inclusion of existing gas-fired power plants that were expanded, retrofit and repowered with renewable fuel sources, which they contend would contravene the goal of Section 83 to encourage the growth of an economically sustainable renewable power sector (NECEC Comments at 5; CLF Comments at 8-9). Conectiv and Consolidated Edison also recommend that the RFP recognize the possibility that legislative or regulatory changes could be made to the eligibility requirements prior to completion of the solicitation process (Conectiv Comments at 1-2; Consolidated Edison Comments at 1).¹⁰ The electric distribution companies respond that Section 83 does not provide for specific exceptions or inclusions of fuel sources and, therefore, the recommendations of Conectiv, CLF, and NECEC to restrict the eligibility of certain RPS Class I resources are inconsistent with Section 83 (Electric Distribution Companies Reply Comments at 5-6).

Consolidated Edison states that the RFP should not require a seller to qualify a project's RECs in states other than Massachusetts to be eligible to participate in the RFP (Consolidated

¹⁰ Conectiv states that, on April 19, 2009, the state legislature's Joint Committee on Telecommunications, Utilities and Energy submitted a report to DOER expressing concerns about recent amendments to RPS Class I eligibility (Conectiv Initial Comments at 1). Additionally, Consolidated Edison argues that if DOER enacts its pending proposal to require procurement of solar RECs ("solar carve-out"): (1) solar RECs should be an eligible product in the procurement; and (2) electric distribution companies should be required to purchase a certain amount of solar RECs through the solicitation (Consolidated Edison Comments at 1).

Edison Comments at 1). Alternatively, the electric distribution companies argue that meeting RPS qualifications in other states is a common commercial term which is likely to enhance the value of contracts for customers (Electric Distribution Companies Reply Comments at 8).

Two commenters expressed concern with the RFP's requirement that a bidder demonstrate projected energy output during summer and/or winter peak hours to show compliance with the Section 83 requirement that a project must contribute to moderating system peak load requirements.¹¹ A.D. Makepeace contends that intermittent resources will struggle to operate during every hour of each peak period and argues that bidders should instead be required to demonstrate a project's ability to moderate summer system peak load (A.D. Makepeace Comments at 8).¹² APNS states that most renewable energy sources are intermittent and argues that requiring generators to demonstrate that they provide enhanced electricity reliability within the Commonwealth is neither realistic nor practical for all technologies (APNS Comments at 3-4). The electric distribution companies contend that Section 83 requires an assessment of a project's ability to contribute to moderating system peak load requirements and makes no distinction between summer system peak load and winter system peak load (Electric Distribution Companies Reply Comments at 6). Thus, the electric distribution companies contend that it is appropriate to consider the effect of a project on both

¹¹ In the RFP, "peak hours" are the hours used in Independent System Operator-New England's Forward Capacity Market for determining qualified capacity for intermittent resources (RFP Section 2.2.3.7).

¹² A.D. Makepeace argues that summer peak hours represent the most pressing obstacle to lowering system costs while ensuring reliability because these hours have historically produced the highest cost to meeting system reliability levels (A.D. Makepeace Comments at 8).

summer and winter system peak load requirements (Electric Distribution Companies Reply Comments at 6).

Finally, the Petitioners state that they now recognize that the RFP deadlines for financing, construction, and commercial operation are too ambitious in light of the realities of lead times for renewable energy projects in the Commonwealth (*id.* at 2; DOER Reply Comments at 3). Accordingly, the Petitioners propose to extend both dates referenced in Section 2.2.3.2 by one year.¹³

3. Weighting of Price and Non-Price Factors

Several commenters are opposed to the proposed weighting of price and non-price factors (Cape Wind Comments at 4; CLF Comments at 3-7; CLF Reply Comments at 2; Madera Comments at 3; and NECEC Comments at 1). Madera argues that the RFP should also afford considerable weight to reliability and peak load moderation (Madera Comments at 3). Cape Wind and CLF argue that the proposed weighting of non-price factors at the second stage of evaluation will result in little or no consideration of the non-price factors (Cape Wind Comments at 4-5; CLF Comments at 3-8). Cape Wind acknowledges that the third stage of the evaluation will include criteria for green job creation but argues that specific weighting must be applied to such factors (Cape Wind Comments at 5). CLF argues that the proposed three-step evaluation will result in price as the paramount attribute to be considered in the ranking of projects (CLF Comments at 5).

¹³ Specifically, the deadline for closing of construction financing and commencement of construction would be changed to December 21, 2012, and the deadline for commercial operation would be changed to December 31, 2015 (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3).

Some commenters suggest that the Department should prescribe evaluation criteria and weighting for specific price and non-price factors (AFL-CIO Comments at 1; Cape Wind Comments at 4-6; CLF Comments at 7; NECEC Comments at 1). Cape Wind states that the bid evaluation should consider all costs and benefits over the life of the contract (Cape Wind Comments at 4). AFL-CIO, Cape Wind, and NECEC argue that substantial weight should be afforded to non-price criteria, including job creation and environmental benefits (AFL-CIO Comments at 1; Cape Wind Comments at 4; NECEC Comments at 1). Specifically, Cape Wind recommends that economic development and job creation receive at least 30 percent weighting, as it contends is done in New York (Cape Wind Comments at 5-6, citing Order Authorizing Solicitation Methods in Consideration of Bid Evaluation Criteria in Denying Request for Clarification (N.Y.P.S.C. O3-E-O188, October 19, 2006)). Cape Wind further notes that Connecticut's process for long-term contracts for renewable energy limits consideration of price factors to 55 percent (Cape Wind Comments at 4, citing Review of Long-Term Renewable Contracts—Round 3, Conn. D.P.U.C. 08-03-03 (April 8, 2009)). AFL-CIO and NECEC argue that the electric distribution companies should be required to afford 50 percent weight to economic development and job creation advantages of proposed projects (AFL-CIO Comments at 1; NECEC Comments at 1). CLF states that, if an explicit numerical balance must be set, environmental, fuel diversity, and reliability factors should account for at least 50 percent weight, with considerable weight afforded to each project's potential to generate clean electricity without increasing greenhouse gases, consistent with the Global Warming Solutions Act (CLF Comments at 7, citing St. 2008, c. 298, An Act Establishing the Global Warming Solutions Act; CLF Reply Comments at 3).

The electric distribution companies contend that the proposed weighting is reasonable because it strikes an appropriate balance between price and non-price factors, and it is consistent with industry standards (Electric Distribution Companies Reply Comments at 4). The electric distribution companies argue that costs associated with future federal regulation of carbon dioxide emissions, as well as the value of RECs and Regional Greenhouse Gas Initiative (“RGGI”) allowances, will be accounted for in the evaluation of price factors as these costs will be reflected in the bids (id. at 4-5, citing RFP Section 2.3.1). The electric distribution companies contend that Section 83 contracts will be different from those in New York because those contracts are not limited to projects located in the state of New York, whereas Section 83 contracts must be with a project located within Massachusetts (Electric Distribution Companies Reply Comments at 5). The Attorney General supports the proposed weighting because she contends that it places the appropriate emphasis on price (Attorney General Reply Comments at 2-3). The Attorney General argues that Section 83 allows the Department to consider benefits in the areas of reliability, peak load moderation, or Massachusetts employment, but it does not diminish the primacy of cost as the focus of its consideration (id. at 3).

Finally, A.D. Makepeace asserts that the Petitioners’ proposed pricing format should include a dollars per kilowatt per year (“\$/kW/year”) format as well as a dollars per megawatt-hour (“\$/MWh”) format (A.D. Makepeace Comments at 1). A.D. Makepeace contends that the exclusion of \$/kW/year bids is inconsistent with the Petitioners’ stated goal of providing a cost-effective, long-term source of renewable energy (id.). The electric distribution companies respond that bidders may employ this type of pricing as a

non-conforming bid (Electric Distribution Companies Reply Comments at 5, citing RFP Section 2.2.4.2.).

4. Final Selection Process

Several commenters discussed the need for transparency in review of contracts (APNS Comments at 3-4; Attorney General Comments at 2; Attorney General Reply Comments at 2; Cape Light Compact Comments at 4). Cape Light Compact states that the process for review of the contracts should be transparent and objective (Cape Light Compact Comments at 4). Additionally, the Cape Light Compact argues that the third stage of the bid evaluation process should be eliminated because allowing electric distribution companies complete discretion to select winning bids in this stage renders the first and second stages of the evaluation moot (id. at 4-6). The Attorney General states that, upon filing a petition for approval of a contract, each electric distribution company should be prepared to fully document its evaluation and selection process, and submit testimony, exhibits, and all back-up documentation for review by others (Attorney General Reply Comments at 2).

The electric distribution companies respond that the discretion provided for in the third stage of the bid evaluation process is necessary to allow for the reasonable exercise of business judgment and to allow the electric distribution companies to consider a number of specified factors in reviewing bids, which they contend is consistent with Section 83 (Electric Distribution Companies Reply Comments at 5). In response to the comments of Cape Light Compact regarding access to bid prices during regulatory review of the contracts, the electric distribution companies state that they have significant concerns regarding the confidentiality of price and price-related terms resulting from the competitive solicitation (id. at 7). While they

agree that confidentiality issues will need to be addressed when the individual contracts are reviewed by the Department, the electric distribution companies argue that such issues are not relevant at this stage in the proceeding (id.).

C. Solicitation Timetable

Commenters identified potential problems with the 185-day timetable. Observing that the timetable does not explicitly address the 45-day review period afforded her by Section 83 to prepare a recommendation, the Attorney General recommends that she receive the relevant materials and information before a contract is filed with the Department (Attorney General Comments at 2-3). CLF states that the proposed RFP sets out an 185-day timetable that, after factoring in the Attorney General's 45-day review and time for the Department's review of final contracts, would take at least three-quarters of a year and potentially much longer (CLF Comments at 12). NECEC claims that the length of this timetable will discourage some bidders from entering the process and increase costs for those who participate (NECEC Comments at 6). Ansar contends that the 185-day timetable leaves relatively little margin for unforeseen delays and events, which could delay the start of project construction (Ansar Comments at 2). For these reasons, CLF, NECEC, and Ansar recommend that the timetable be as short as possible, while allowing sufficient time to process and compare the proposals (CLF Comments at 12; NECEC Comments at 2, 6; Ansar Comments at 2). In addition, instead of three evaluation stages, NECEC suggests a single step to identify a short-list of bidders, with the criteria for evaluating price proposals identified in advance (NECEC Comments at 6).

Commenters also identified potential problems with certain specific deadlines in the timetable. Consolidated Edison notes that the deadline to submit questions after the bidder's conference is only three days, which it contends is too short and should be extended to at least one week before final bids are due (Consolidated Edison Comments at 2).¹⁴ Consolidated Edison also asserts that the 30-day or longer time period between completion of the PPA execution and submittal of the PPA to the Department for review and approval is excessive and should be reduced (id.). A.D. Makepeace alleges that a 35-day period between issuance of the RFP and the deadline to submit proposals is too short to prepare a detailed bid (A.D. Makepeace Comments at 7). A.D. Makepeace argues that the limited response time will reflect greater uncertainty in the estimate of risks and costs in the initial stages of a project (id.). To produce higher quality, realistic bids, A.D. Makepeace recommends that the schedule provide an additional 30 to 60 days for the preparation of bids (id. at 7-8).

The electric distribution companies acknowledge the Attorney General's interest in having sufficient time for review and input given the 45-day period specified for this purpose in Section 83 (Electric Distribution Companies Reply Comments at 4). The electric distribution companies state that they will endeavor to address the Attorney General's concerns in a manner consistent with their individual business requirements (id.).

In response to the comments alleging problems with the 185-day timetable, the electric distribution companies state that the proposed schedule represents the Petitioners' best efforts

¹⁴ Consolidated Edison also recommends that a process for answering questions be established that would include acknowledgement of the receipt of a question, assignment of a tracking number, and a time for response (Consolidated Edison Comments at 2).

to meet a number of goals, including: (1) providing a reasonable opportunity for stakeholders to review and comment on the RFP; (2) providing a reasonable opportunity for the Department to review and render a decision on the proposed contracts; and (3) the need for this process to move as expeditiously as possible (id. at 3-4). The electric distribution companies stress that any modifications to the schedule could delay the process and jeopardize a renewable energy project developer's ability to secure federal financial incentives (id. at 4). In response to the specific concern about the deadline to submit questions after the bidders' conference, the electric distribution companies argue that three business days is a reasonable period of time (id.).

NECEC argues that the requirement to provide firm pricing for 120 days is too long for smaller developers who do not have access to long-term, multi-project equipment supply contracts or the ability to shift equipment and other technical resources amongst various development projects (NECEC Comments at 6). Even for larger developers who can hold prices for comparatively longer periods, NECEC contends that it is unclear whether and how bidders will be allowed to adjust their prices once the 120 day time period has elapsed (id.). Consolidated Edison contends that the language in Section 2.2.4.1 makes the prices, terms and conditions of the proposal valid for an indefinite period of time and suggests that, if an electric distribution company needs an extension beyond 120 days to execute a contract with a supplier, then the extension must be negotiated on mutually agreeable terms (Consolidated Edison Comments at 1). In response to Consolidated Edison's concerns, the electric distribution companies state that the intent of such language was to ensure that the price is firm for 120 days (Electric Distribution Companies Reply Comments at 9).

D. Regulatory Approval

Section 2.6 of the RFP addresses the issue of regulatory approval and the associated schedule. While CED, CLF, and Conectiv support the provision in the RFP that provides rights of termination if the Department does not approve the PPA as filed, they argue that these rights should apply to both the seller and the electric distribution companies, without liability (Consolidated Edison Comments at 2; Conectiv Comments at 4-5; CLF Comments at 12). Consolidated Edison asserts that: (1) both the seller and the electric distribution companies should be allowed to renegotiate, for a specified number of days, if a conditional approval is received from the Department; (2) there should be explicit identification of the time when or conditions under which the PPA becomes binding upon the electric distribution company; and (3) sellers should have the right to adjust milestones and pricing, in accordance with a formula, if regulatory approval is not received within a specified period of time (Consolidated Edison Comments at 2). Conectiv asserts that, if the Department's approval does not authorize the electric distribution company to recover its costs, then the electric distribution company should be able to terminate the PPA (Conectiv Comments at 5).

E. Model Power Purchase Agreement

Cape Light Compact, NECEC, the Attorney General, CLF and A.D. Makepeace request that the Department review and approve a Model PPA (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2; A.D. Makepeace Comments at 9). Cape Light, NECEC, the Attorney General, and CLF argue that a full evaluation of the proposed RFP is not possible without the terms of a Model PPA (Cape Light Compact

Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). These commenters state that lack of a Model PPA will: (1) make it much more difficult to address issues after contracts have been executed; and (2) delay the review and approval of the contracts by the Department (Cape Light Compact Comments at 6-7; NECEC Initial Comments at 2; Attorney General Initial Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). Cape Light Compact, NECEC, the Attorney General, and CLF urge the Department to review and approve a Model PPA in order to: (1) promote transparency, fairness and efficiency; (2) ensure commercially reasonable terms; (3) establish a framework for the review of all long-term contracts that will come before the Department pursuant to Section 83; and (4) ensure, in advance, that contract terms will be consistent with Section 83 (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2). To avoid any delay in the review and approval of the RFP, the Attorney General and NECEC recommend that the electric distribution companies file a Model PPA for review now and leave open for subsequent determination whether to investigate the Model PPA further (NECEC Comments at 3; Attorney General Reply Comments at 2).

The Petitioners state that they have no objection to filing a Model PPA with the Department for informational purposes when a final document is available, however, they state that the Model PPA is still being developed (Electric Distribution Companies Reply Comments

at 2; DOER Reply Comments at 3-4).¹⁵ The Petitioners contend that approval of a Model PPA by the Department is not necessary for the following reasons: (1) Section 83 does not require the Department approval of a Model PPA; (2) review and approval of a Model PPA would cause substantial undue delay in the start of the solicitation process; and (3) interested parties will have ample opportunity to comment on a specific PPA at such time as an electric distribution company seeks Department approval of executed contracts containing actual terms and conditions (Electric Distribution Companies Reply Comments at 2-3; DOER Reply Comments at 3-4).

IV. ANALYSIS AND FINDINGS

As described above, Section 83 of the Green Communities Act requires electric distribution companies to twice in a five-year period beginning July 1, 2009, solicit proposals for long-term contracts from renewable energy developers. Electric distribution companies may also voluntarily solicit additional proposals over the five-year period. Each electric distribution company shall select a reasonable method of soliciting proposals from renewable energy developers, which may include public solicitations, individual negotiations or other methods. St. 2008, c. 169, § 83. The electric distribution companies must consult with DOER in the development of the solicitation process. St. 2008, c. 169, § 83; 220 C.M.R. § 17.04. The Department must review and approve the timetable and method for

¹⁵ In a subsequent letter, DOER states that the Petitioners have held a number of additional conference calls and meetings to address issues pertaining to the Model PPA (DOER Letter of November 23, 2009). DOER states that, while outstanding issues remain, it is hopeful that the Petitioners will resolve certain issues within a week or two (DOER Letter of November 23, 2009).

soliciting and executing long-term contracts, as well as any executed contracts that result.

St. 2008, c. 169, § 83.

In promulgating regulations regarding long-term contracts for renewable energy pursuant to Section 83, the Department sought to strike a balance between: (1) providing some level of certainty and guidance to both electric distribution companies and renewable energy project developers regarding the process for entering into these contracts; and (2) retaining sufficient flexibility to allow for a variety of methods for soliciting proposals and entering into contracts for diverse renewable resources. Long-Term Contracts for Renewable Energy, D.P.U. 08-88, at 10 (2009) (establishing 220 C.M.R. § 17.00 et seq.). The Department stated that our objective was to avoid predetermining or limiting the consideration of proposed contracts or evaluation models in advance. Id. at 10-11. These same considerations guide our review of the Petitioners' proposed timetable and method for soliciting and executing long-term contracts for renewable energy.

The Department finds that the timetable and methods of solicitation and execution of contracts included in the proposed RFP are consistent with the requirements of Section 83 and 220 C.M.R. § 17.00 et seq. (see RFP Section 2.2 et seq.). Specifically, as allowed by Section 83, the Petitioners propose to solicit long-term contracts with a term of between ten and 15 years (id. § 2.2.2.4). Section 83 also states that each electric distribution company may consider multiple contracting methods, including long-term contracts for RECs, for energy, or a combination of RECs and energy, and the Petitioners' proposed RFP defines eligible products as electric energy and/or RECs (id. § 2.2.2.3). Section 83 requires that renewable energy generating sources have a commercial operation date on or after January 1, 2008, and

be qualified to sell RECs under the Commonwealth's RPS program, and the Petitioners' proposed RFP implements these requirements as eligibility criteria (id. § 2.2.2.2).

Section 83 requires the Department to determine that a renewable energy generating source:

(1) provides enhanced electricity reliability within the Commonwealth; (2) contributes to moderating system peak load requirements; (3) will be cost-effective to Massachusetts ratepayers over the term of the contract; and (4) creates additional employment in the Commonwealth, where feasible. These criteria are included in the first, second, and third evaluation stages described in the Petitioners' proposed RFP (id. §§ 2.3, 2.4). The Petitioners' stated intent is to solicit energy and RECs for approximately 1.5 percent of the electric distribution companies' annual load (id. § 2.2.2.5), which is consistent with Section 83, which states that an electric distribution company is not obligated to enter into long-term contracts that would, in the aggregate, exceed three per cent of its total load. Because the Petitioners have implemented the requirements of Section 83 in their proposed RFP, we find that the Petitioners' proposed RFP provides a reasonable method of soliciting and executing long-term contracts for renewable energy.

Several commenters raised concerns about the proposed solicitation timetable of 185 days; some requesting that additional time be allowed for certain activities, and others requesting that the timetable be shortened. The electric distribution companies have met their obligation under Section 83 to consult with DOER with respect to the timetable and methods of soliciting and executing long-term contracts for renewable energy, and DOER's full support of the proposal is evidenced by its joint sponsorship of the petition. Because of the consultative role afforded to DOER by Section 83, the Department finds it appropriate to give considerable

weight to DOER's judgment and experience with respect to the proposed timetable of 185 days for soliciting and executing long-term contracts for renewable energy. However, while the proposed RFP describes the process to be used to initiate the solicitation of long-term contracts for renewable energy, based upon the Petitioners' experience and the input of stakeholders, additional or different contract terms may be subsequently developed. For example, as a result of the comments received in the course of this proceeding, the Petitioners propose to modify certain financing, construction, and commercial operation deadlines for bidders as outlined in the RFP.¹⁶

Commenters also raised a number of substantive issues regarding the specifics of a company's bid evaluation process, negotiations with respect to the terms and conditions of resulting PPAs, and the final details contained in the PPAs that will be submitted for Department review and approval. As an initial matter, we stated in our rulemaking on long-term contracts for renewable energy that we wish to avoid predetermining or limiting the consideration of proposed contracts or evaluation models in advance. D.P.U. 08-88-A at 10. To do so could constrain the flexibility of buyers and sellers in PPA negotiations to seek the

¹⁶ In their comments, the Petitioners state that they now recognize that the RFP deadlines for financing, construction, and commercial operation are too ambitious in light of the realities of lead times for renewable energy projects in the Commonwealth (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). Accordingly, the Petitioners propose to extend both dates referenced in Section 2.2.3.2 by one year (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). Specifically, the deadline for closing of construction financing and commencement of construction would be changed to December 21, 2012, and the deadline for commercial operation would be changed to December 31, 2015 (Electric Distribution Companies Reply Comments at 2; DOER Reply Comments at 3). The Department accepts these proposed modified deadlines for financing, construction, and commercial operation as reasonable.

best sharing of risks and benefits under the contracts. Further, the Department finds that Parties will have the opportunity to raise all relevant substantive issues with respect to the evaluation of proposed projects, to all phases of contract development and negotiation, and to the specific terms and conditions contained in the resulting PPA(s) in the context of the adjudication before the Department of individual long-term contracts for renewable energy. See D.P.U. 08-88-A at 10. We find that the appropriate time to address many of these substantive issues is when each electric distribution company submits a proposed contract for Department approval. See id. at 10-11. Determinations about whether the contracts that result from this solicitation are consistent with the public interest and result in just and reasonable rates must be made in the context of individual adjudications, where the Department will weigh evidence and argument in order to make fact-based decisions on a case-by-case basis. See id. at 10-11.

Several of the concerns noted by commenters raise questions about companies' negotiations with bidders, and the inclusion of terms and conditions in a Model PPA. They suggest that the Department review the Model PPA and limit or control the final phase of contract negotiation (Cape Light Compact Comments at 6-7; NECEC Comments at 2; Attorney General Comments at 2; Attorney General Reply Comments at 2; CLF Reply Comments at 2; A.D. Makepeace Comments at 9). The Department is hesitant to limit the flexibility of this phase of the process in our review of the timetables and methods for solicitation. We expect that the negotiation stage of project evaluation and contract development will result in substantive changes to contract terms and conditions that are needed to establish the appropriate balance of risks and benefits under the long-term contract. Consequently, we

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conclude it is not necessary at this point in time to review model terms and conditions in a Model PPA, and instead will reserve our full review of all details of the executed contracts (and the negotiation process) at the time they are proposed to the Department for approval.

Finally, we note that Section 83 of the Green Communities Act provides wide flexibility for the method for soliciting renewable energy, including through RFP solicitations, individual negotiations, and other reasonable methods, in order to allow for new renewable project financing and achieve the commercial development of renewable resources in Massachusetts. It is our expectation that any method an electric distribution company uses to solicit and enter into long-term contracts with renewable energy developers will be developed and implemented in a manner that is consistent with the intent and language of the Green Communities Act, and we will consider this at the time we review any executed contracts proposed to the Department for approval. The Department emphasizes that we, and not the electric distribution companies, are the final arbiters of whether such proposals are reasonable and whether the resulting long-term contracts achieve the objectives of the Green Communities Act.

Based on the above, the Department approves the Petitioners' proposed timetable and methods of solicitation and execution of long-term contracts for renewable energy contained in the RFP as consistent with the requirements of Section 83 and 220 C.M.R. § 17.00 et seq.

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V. ORDER

Accordingly, after due notice and comment, it is

ORDERED: That the joint petition of Fitchburg Gas and Electric Light Company d/b/a Unital, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, Western Massachusetts Electric Company, and the Department of Energy Resources for approval of a proposed timetable and method of soliciting and executing long-term contracts for renewable energy is APPROVED; and it is

FURTHER ORDERED: That Fitchburg Gas and Electric Light Company d/b/a Unital, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company shall comply with all other directives contained in this Order.

By Order of the Department,

/s/

Paul J. Hibbard, Chairman

/s/

Tim Woolf, Commissioner

/s/

Jolette A. Westbrook, Commissioner

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.