

Attachment F:

Agreement to Purchase Unforced Capacity in NYISO Installed Capacity Auctions

THIS AGREEMENT TO PURCHASE UNFORCED CAPACITY (the "Purchase Agreement"), dated as of this _____ day of _____, _____, is given by _____, having a principal business address at _____ (the "Bidder").

RECITALS

WHEREAS, pursuant to the terms of the New York Independent System Operator Market Administration and Control Area Services Tariff (the "ISO Services Tariff") and the NYISO Installed Capacity Manual (the "ICAP Manual"), the New York Independent System Operator, Inc. (the "NYISO") will administer "Strip" auctions (twice per year) and "Monthly" auctions (12 per year), wherein Offerors may sell and Bidders may purchase Unforced Capacity, as well as "Spot Market" auctions (12 per year), wherein Offerors may sell Unforced Capacity and the NYISO will purchase Unforced Capacity on behalf of Load Serving Entities; and

WHEREAS, all capitalized terms used herein without definition shall have the meaning ascribed thereto in the ISO Services Tariff and/or the Independent System Operator Agreement (the "ISO Agreement") and the ICAP Manual; and

WHEREAS, to the extent that Bidder purchases Unforced Capacity under the terms of this Purchase Agreement, Bidder satisfies its Unforced Capacity requirements with respect to the Unforced Capacity so purchased; and

WHEREAS, Bidder is an Eligible Customer and intends that the submission of this Purchase Agreement, coupled with the submission of a properly formatted bid via electronic mail ("Electronic Bid") (together, "Bid Package"), shall constitute an official bid for purposes of each Auction in which the Bidder submits an Electronic Bid and that the Bid Package will be recorded and objectively analyzed pursuant to the ISO Services Tariff and the ICAP Manual, which materials have been reviewed by the Bidder;

NOW, THEREFORE, in consideration of the NYISO including Bidder's Electronic Bids in the Auctions, which Bidder acknowledges and agrees is adequate consideration for its obligations hereunder, Bidder and the NYISO (together the "Parties") hereby agree to the following:

1. Bid to Purchase Unforced Capacity.

- (a) The Parties agree that Auctions will be conducted in accordance with the ISO Services Tariff and the ICAP Manual.
- (b) The Parties agree that each Electronic Bid submitted is valid for only one Auction and that an Electronic Bid must be submitted for each Auction in which the Bidder desires to participate.
- (c) The Bidder agrees to purchase Unforced Capacity in the amounts, for the monthly effective periods, in the locations and for the maximum price (or less) listed in the Bidder's Electronic Bids (each individual bid listed in the Bidder's Electronic Bid being referred to as an "Individual Bid") and requests that the NYISO include the Individual Bids in the Auction for which they are submitted.
- (d) The Parties agree that the purchase price for the Unforced Capacity offered in each Individual Bid in an Auction shall be the Market Clearing Price established in that Auction (as determined by the NYISO, or its designee); provided, however, that if the Unforced Capacity is from a Subject Generator (as defined in Attachment I of the ICAP Manual) then the purchase price shall be adjusted in the same manner as the sale price is adjusted under the ICAP Manual.
- (e) The Parties agree that the Bidder's submission of a completed Bid Package represents a binding obligation of the Bidder to purchase and pay for the amount of Unforced Capacity designated by the NYISO in the Award Notice (as defined below) pursuant to the terms of the ISO Services Tariff and the ICAP Manual.
- (f) The Parties agree that the mere submission of a Bid Package does not obligate the NYISO to accept the Bid Package, in whole or in part, nor does the submission of a Bid Package grant any right to the Bidder to purchase any Unforced Capacity.
- (g) The Parties agree that the Market Clearing Price for Unforced Capacity could be positive or zero.
- (h) The Parties agree that the bids contained in the Bidder's Electronic Bid may be amended by the Bidder at any time during the period in which Electronic Bids are accepted (the "Bidding Period") by submitting a new Electronic Bid which must be received in accordance with this Section and the ICAP Manual. If an amendment is timely and correctly submitted by the Bidder as provided herein, the most recently received Electronic Bid, as indicated by the date and time of submission reported on the Electronic Bid, will supersede any previous Electronic Bid(s) and any previous Electronic Bid(s) will have no further force or effect.
- (i) The Parties agree that the original of this Purchase Agreement must be received by the NYISO by overnight mail service or delivery service requiring the signature of the addressee by 12:00 PM on the business day before the first Auction in which the Bidder desires to participate, as specified in Attachment A of the ICAP Manual. Express mail deliveries must be delivered to:

ICAP Auctioneer
C/o New York Independent System Operator
290 Washington Ave. Ext.
Albany, NY 12203

- (j) The Parties agree that to complete the Bid Package, the Bidder must submit, in addition to a Purchase Agreement, a properly formatted Electronic Bid to the NYISO at buyicap@nyiso.com prior to close of the Bidding Period in each Auction in which the Bidder wishes to participate. The Parties further agree that the Electronic Bid must be submitted in the format provided by the NYISO using Microsoft Excel software, that the Bidder must provide all information required on the Electronic Bid, that the Bidder must password-protect the file before transmitting it to the NYISO, and that the time of submission for all Electronic Bids will be determined by the date and time stamp of the automatic return receipt transmitted by the NYISO to the Bidder upon receipt of the Electronic Bid.
- (k) The Parties agree that timely submission of a Bid Package does not guarantee that the Bid Package is valid for inclusion in an Auction. The Parties agree that a Bid Package that has not been completed in conformity with the ICAP Manual and this Purchase Agreement, in the NYISO's sole judgment, shall be invalid and will be rejected.
- (l) In the event that the NYISO invalidates a Bidder's Bid Package, it shall notify the Bidder as soon as reasonably possible via email. If a Bidder's Bid Package is invalidated, the Bidder shall have the right to submit a revised Bid Package at any time until the close of the Bidding Period.
- (m) The Parties agree that the Bidder bears the sole responsibility for submitting a correct and complete Bid Package.
- (n) The Parties agree that the Bidder will not assign any of its rights or obligations under a Bid Package unless the assignee of such rights and obligations makes the representations and warranties in Section 3(a)(i), (ii) and (iii).

2. Payment Procedures for the Purchase of Unforced Capacity.

- (a) The Bidder's obligation to purchase and pay for Unforced Capacity shall become effective upon the distribution of written notice (the "Award Notice") following each Auction, as specified in Attachment A to the ICAP Manual. The Award Notice shall specify the amount of Unforced Capacity, if any, that the Bidder shall be required to purchase (the "Awarded Unforced Capacity"), the Market Clearing Price of such Awarded Unforced Capacity, the location of such Awarded Unforced Capacity, the Total Purchase Price (as defined in this Section 2(a)) and wiring instructions for paying the Total Purchase Price for the Awarded Unforced Capacity. The total purchase price (the "Total Purchase Price") shall equal the sum of the products of the amount of Unforced Capacity and the Market Clearing Price for each Individual Bid, except, if any Individual Bid to be included in such

calculation includes Unforced Capacity from a Subject Generator, then the purchase price shall be adjusted in the same manner as the sale price is adjusted under the ICAP Manual.

- (b) Amounts due on Unforced Capacity purchased in the Strip Auctions will be settled on a monthly basis. In each monthly billing, the NYISO will issue bills for one sixth of the Total Purchase Price specified in the Award Notice for the last Capability Period Auction. Bills issued by the NYISO for the purchase of Unforced Capacity will be net of any rebates due to the Bidder.
- (c) Amounts due on Unforced Capacity purchased in the Monthly and Spot Market Auctions will be settled on a monthly basis. In each monthly billing, the NYISO will issue bills for the Total Purchase Price specified in the Award Notice for the last Auction. Bills issued by the NYISO for the purchase of Unforced Capacity will be net of any rebates due to the Bidder.
- (d) By 10:00 AM on the first banking day after the fifteenth day of the month after the month for which Unforced Capacity was purchased, Bidder shall cause funds to be wired to the accounts specified in the Award Notice in an amount equal to the Total Purchase Price, as indicated in the monthly bill issued by the NYISO for that Auction.
- (e) Within six (6) business days after receipt of an Award Notice by the Bidder, to the extent that the Bidder disputes the calculation of the Total Purchase Price due and payable, the Bidder shall give written notice to the NYISO, or its designee, setting forth in reasonable detail the basis for any such disagreement (“Dispute”). If the Bidder does not give written notice within the six (6) business day period, the Bidder shall be deemed to have irrevocably accepted the Total Purchase Price in the manner specified in the Award Notice as delivered to the Bidder by the NYISO, or its designee.
- (f) If a timely filed written notice of Dispute is given, the Bidder and the NYISO, or its designee, shall promptly commence good faith negotiations with a view to resolving the Dispute(s) within five (5) business days of the NYISO’s receipt of such notice. If the Dispute(s) are not resolved within the five (5) business day period, then the Dispute(s) shall thereafter be referred by either the Bidder or the NYISO, or its designee, to Richard L. Miles, Director, of the FERC Office of Dispute Resolution Service, or his successor in office (the “Director”) for a resolution of such Dispute(s) in accordance with this Purchase Agreement and the ICAP Manual. The resolution of the Dispute(s) shall be conducted in the following manner:
 - (i) Within three (3) business days after being notified of a Dispute, the Director shall identify and create a list of five (5) arbitrators who must be knowledgeable about the energy industry, to be delivered to the Bidder and the NYISO, or its designee.

- (ii) Within five (5) business days of receipt of such list from the Director, the Bidder and the NYISO, or its designee, separately, shall select three (3) arbitrators from the Director's list and resubmit their selections to the Director.
- (iii) Within two (2) business days of the Director's receipt of the resubmitted list of arbitrators from the Bidder and the NYISO, or its designee, the Director shall select in its sole discretion one arbitrator (the "Arbitrator") to resolve the Dispute(s) in accordance with the terms and conditions of this Purchase Agreement and the ICAP Manual. The decision and resolution of the Arbitrator shall be rendered within twenty (20) business days after referral of the Dispute(s) to the Arbitrator and shall be final and binding upon the parties. During this twenty (20) business day period, the Bidder and the NYISO, or its designee, will be allowed to make written and oral presentations to the Arbitrator. The Bidder and the NYISO, or its designee, shall use their best efforts to cause the Arbitrator to render its decision within the twenty (20) business day period described above, and each shall cooperate with the Arbitrator and provide the Arbitrator with access to the books, records and representatives of each as the Arbitrator may require in order to render its determination. All of the fees and expenses of any Arbitrator retained pursuant to this Section shall be paid by the party who does not prevail in the Dispute(s).
- (iv) In the event that the Bidder is barred, by law, from entering into binding arbitration, Disputes shall be heard in a court of competent jurisdiction in the State of New York.
- (g) To the extent that the Bidder disputes the calculation of the Total Purchase Price due and payable, the Bidder shall remain obligated to make payment in full for the Unforced Capacity, as indicated in the Award Notice. If it is later determined, in accordance with this Section 2, that an overpayment has been made by the Bidder to the NYISO, then the NYISO shall refund the amount overpaid to the Bidder. If it is later determined, in accordance with this Section 2, that an underpayment has been made by the Bidder, then the Bidder shall pay the amount owed to the NYISO. Payments made pursuant to this Section 2(e) shall also include interest calculated from the date that the overpayment or underpayment was made, in accordance with the methodology specified for interest on refunds in the FERC regulations at 18 C.F.R. § 35.19a(a)(2)(iii).
- (h) If a mistake is discovered in the calculation of information provided in an Award Notice after its delivery, the NYISO reserves the right and has the obligation to revise the Award Notice and the information therein, and the Bidder acknowledges that it will be obligated to make arrangement for payment or receipt of payment in accordance with the revised Award Notice. Prior to making such revision, the NYISO shall notify Bidder of the mistake and provide Bidder with an explanation of the basis for the revised Award Notice.

3. Representations and Warranties of the Bidder.

- (a) The Bidder hereby represents and warrants to the NYISO as follows:
- (i) Bidder is an Eligible Customer and is purchasing Unforced Capacity solely for purposes related to its business as a producer, processor, commercial user of or a merchant handling Unforced Capacity or the products or by-products thereof.
 - (ii) Bidder shall not resell any Unforced Capacity purchased through the Auctions for the purpose of meeting the Installed Capacity requirements imposed by operators of External Control Areas.
 - (iii) Bidder has full power and authority to execute and deliver the Bid Package and to perform its obligations hereunder. The completed Bid Package constitutes a valid and legally binding obligation of the Bidder.
 - (iv) The execution and delivery of the Bid Package and the consummation of the transactions contemplated hereby have been duly and validly approved by all requisite action, corporate or otherwise, on the part of Bidder, and no other proceedings, corporate or otherwise, on the part of Bidder are necessary to approve and submit the Bid Package and to consummate the transactions contemplated hereby.
 - (v) Bidder is qualified to purchase the Unforced Capacity and has sufficient funds to purchase the Unforced Capacity as contemplated herein.
 - (vi) Bidder holds all licenses, franchises, permits and authorizations in compliance with any applicable laws, rules and regulations that are necessary for the lawful ownership and/or use of the Unforced Capacity.
 - (vii) Other than providing the information required by this Purchase Agreement, Bidder has not amended or changed this Purchase Agreement in any way to make it different from the "Purchase Agreement" attached to the ICAP Manual as Attachment F.
- (b) All representations and warranties contained herein shall be deemed to be made again as of the purchase and sale of the Unforced Capacity as contemplated in this Purchase Agreement.

4. Indemnification; Release of Liability.

- (a) Bidder agrees to indemnify and save and hold harmless the NYISO, and all of its respective officers, directors, employees, and agents, from and against any and all losses, damages, expenses, liabilities, claims or demands, including attorney's fees, (collectively, the "Damages") whatsoever suffered or incurred by such parties resulting, arising from or relating to Bidder's breach of any of its

agreements, covenants, representations or warranties contained herein, except for those Damages resulting from the ISO's gross negligence or intentional misconduct.

- (b) Bidder hereby releases the NYISO, and all of its officers, directors, employees and agents, from any and all liability arising from or relating to the Auctions, except with respect to any gross negligence or intentional misconduct on the part of the NYISO, its officers, directors, employees, or agents.

5. Miscellaneous.

- (a) All inquires, notices, and communications can be given by the NYISO to the Bidder as follows:

Name: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

- (b) All representations, warranties, covenants, and obligations of this Purchase Agreement shall survive the purchase of the Unforced Capacity by the Bidder.
- (c) The Bidder's Bid Package, together with the ISO Services Tariff and the ICAP Manual, constitute the entire agreement between the Parties on the subject matter hereof and supersede all prior discussions, agreements, and understandings of any kind and nature between them.
- (d) It is understood and agreed that the provisions of this Purchase Agreement are intended for the benefit of the Bidder and the NYISO and may be enforced directly by the NYISO against Bidder or by the Bidder against the NYISO.
- (e) This Purchase Agreement and all Electronic Bids shall be governed by and construed in accordance with the laws of the State of New York without giving effect to its conflict of laws provisions.

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

NAME OF BIDDER:

By: _____

Name: _____

Title: _____

New York Independent System Operator, Inc.

By: _____

Name: _____

Title: _____