

Attachment G:

Agreement to Sell Unforced Capacity in NYISO Installed Capacity Auctions

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

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

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

1. Offer to Sell Unforced Capacity.

- (a) The Parties agree that the Auctions will be conducted in accordance with the ISO Services Tariff and the ICAP Manual.

- (b) The Parties agree that each Electronic Offer submitted is valid for only one Auction and that an Electronic Offer must be submitted for each Auction in which the Offeror desires to participate.
- (c) The Offeror agrees to sell Unforced Capacity in the amounts, for at least the minimum prices, and from the resources specified in Offeror's Electronic Offers (each individual offer listed in an Offeror's Electronic Offer being referred to as an "Individual Offer") and requests that the NYISO submit the Individual Offers in Auction for which they are submitted. The Parties agree that the sale price for the Unforced Capacity offered in each Individual Offer 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 the Attachment I of the ICAP Manual) then the sale price for the Unforced Capacity indicated in such Individual Offer shall be calculated pursuant to the ICAP Manual.
- (d) The Parties agree that the Offeror's submission of a completed Offer Package represents a binding obligation of the Offeror to sell the amount of Unforced Capacity referenced in its Electronic Offer.
- (e) The Parties agree that the mere submission of an Offer Package does not obligate the NYISO to accept the Offer Package, in whole or in part, nor does the submission of an Offer Package grant any right to the Offeror to sell any Unforced Capacity.
- (f) The Parties agree that the Market Clearing Price for Unforced Capacity could be positive or zero.
- (g) The Parties agree that the offers contained in Offeror's Electronic Offer may be amended by the Offeror at any time during the period in which Electronic Offers are accepted (the "Offering Period") by submitting a new Electronic Offer which must be received in accordance with this Section and the ICAP Manual. If an amendment is timely and correctly submitted by the Offeror as provided herein, the most recently received Electronic Offer, as indicated by the date and time of submission reported on the Electronic Offer, will supersede any previous Electronic Offer(s) and any previous Electronic Offer(s) will have no further force or effect.
- (h) The Parties agree that the original of this Sale 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 Offeror 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

- (i) The Parties agree that to complete the Offer Package, the Offeror must submit, in addition to a Sale Agreement, a properly formatted Electronic Offer to the NYISO at sellicap@nyiso.com prior to close of the Offering Period in each Auction in which the Offeror wishes to participate. The Parties further agree that the Electronic Offer must be submitted in the format provided by the NYISO using Microsoft Excel software, that the Offeror must provide all information required on the Electronic Offer, that the Offeror must password-protect the file before transmitting it to the NYISO, and that the time of submission for all Electronic Offers will be determined by the date and time stamp of the automatic return receipt transmitted by the NYISO to the Offeror upon receipt of the Electronic Offer.
- (j) The Parties agree that timely submission of an Offer Package does not guarantee that the Offer Package is valid for inclusion in an Auction. The Parties agree that an Offer Package that has not been completed in conformity with the ICAP Manual and this Sale Agreement, in the ISO's sole judgment, shall be invalid and will be rejected.
- (k) In the event that the NYISO invalidates an Offeror's Offer Package, it shall notify the Offeror as soon as reasonably possible via email. If an Offeror's Offer Package is invalidated, the Offeror shall have the right to submit a revised Offer Package at any time until the close of the Offering Period.
- (l) The Parties agree that the Offeror bears the sole responsibility for submitting a correct and complete Offer Package.

2. Payment Procedures for Sale of Unforced Capacity

- (a) The Offeror's obligation to sell 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 that the Offeror has sold in the Auction, the Market Clearing Price of such Unforced Capacity, the location of the resource and the Total Selling Price (as defined in this Section 2(a)). The total selling price ("Total Selling Price") shall equal the sum of the products of the amount of Unforced Capacity and the Market Clearing Price for each Individual Offer, except, if any Individual Offer to be included in such calculation includes Unforced Capacity from a Subject Generator (as defined in the Attachment I of the ICAP Manual), then the individual sales price for any such Individual Offer that must be included in the calculation of Total Selling Price shall be calculated pursuant to the ICAP Manual.

- (b) Within six (6) business days of Offeror's receipt of the Award Notice, Offeror shall give wiring instructions to the NYISO, or its designee, designating the account(s) to which funds generated from the Auction will be transferred by the NYISO pursuant to the ICAP Manual.
- (c) By 10:00 AM on the first banking day after the 20th day of the month after the month for which Unforced Capacity was sold, the NYISO shall cause funds to be wired to the accounts specified in Section 2(b) of this Sale Agreement in an amount equal to the Total Selling Price specified in the Award Notice for that Auction.
- (d) Unforced Capacity sold in the Strip Auction will be paid at one sixth the total amount specified in the Award Notice after the month for which Unforced Capacity was sold, and each month thereafter until the total award value is satisfied.
- (e) Within six (6) business days after receipt of an Award Notice by the Offeror, to the extent that the Offeror disputes the calculation of the Total Selling Price due and payable, the Offeror shall give written notice to the NYISO, or its designee, setting forth in reasonable detail the basis for any such disagreement ("Dispute"). If the Offeror does not give written notice within the six (6) business day period, the Offeror shall be deemed to have irrevocably accepted the Total Selling Price in the manner specified in the Award Notice as delivered to the Offeror by the NYISO, or its designee.
- (f) If a timely filed written notice of Dispute is given, the Offeror 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 ISO'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 Offeror 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 Sale 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 Offeror and the NYISO, or its designee.
 - (ii) Within five (5) business days of receipt of such list from the Director, the Offeror 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 Offeror 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 Sale 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 Offeror and the NYISO, or its designee, will be allowed to make written and oral presentations to the Arbitrator. The Offeror 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.
- (iv) In the event that the Offeror 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 Offeror disputes the calculation of the Total Selling Price due and payable, NYISO 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 underpayment has been made by the NYISO to the Offeror, then the NYISO shall pay the amount owed to the Offeror. If it is later determined, in accordance with this Section 2, that an overpayment has been made by the NYISO to the Offeror, then the Offeror shall refund the amount of the overpayment to the NYISO. Payments made pursuant to this Section 2(f) shall also include interest calculated from the date that the underpayment or overpayment 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 Offeror 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 Offeror of the mistake and provide the Offeror with an explanation of the basis for the revised Award Notice.

3. Representations and Warranties of the Offeror.

- (a) The Offeror hereby represents and warrants to the NYISO as follows:

- (i) Offeror is an Eligible Customer and is selling 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) Offeror has full power and authority to execute and deliver the Offer Package and to perform its obligations thereunder. The completed Offer Package constitutes a valid and legally binding obligation of the Offeror.
- (iii) The execution and delivery of the Offer Package and the consummation of the transactions contemplated thereby have been duly and validly approved by all requisite action, corporate or otherwise, on the part of Offeror, and no other proceedings, corporate or otherwise, on the part of Offeror are necessary to approve and submit the Offer Package and to consummate the transactions contemplated hereby.
- (iv) Offeror is the Installed Capacity Holder (as defined in the ICAP Manual) of the Unforced Capacity being offered pursuant to this Sale Agreement free and clear of any restrictions on transfer (other than imposed under the ISO Services Tariff and the ICAP Manual), taxes, security interests, options, warrants, purchase rights, contracts, commitments, equities, claims, or demands.
- (v) The amount of Unforced Capacity that Offeror has offered for sale pursuant to the Sale Agreement does not exceed the amount of Qualified Installed Capacity, as defined in the ICAP Manual, that the resource from which such Unforced Capacity is obtained (the "Selected Resource") is permitted to provide. Offeror will provide documentation evidencing the amount of Qualified Installed Capacity that the Selected Resource may provide.
- (vi) The amount of Unforced Capacity that the Offeror is offering for sale pursuant to the Sale Agreement does not exceed the Offeror's share of the amount of Unforced Capacity that the Selected Resource is permitted to provide.
- (vii) Offeror [owns] [has contracted to purchase] [is designated as the agent for the owner of] the share of the Selected Resource offered pursuant to this Sale Agreement. (Circle the bracketed language that is applicable and strike the remaining bracketed language.) If Offeror has contracted to purchase or is designated as the agent for the owner of the share of the Selected Resource offered, evidence of such arrangement has been attached to this Sale Agreement.
- (viii) The Unforced Capacity offered for sale pursuant to this Sale Agreement has not previously been committed in the New York market or in any other market.

- (ix) The Unforced Capacity sold by the Offeror in the Auctions is thereby committed to the NYCA and cannot be released by the Offeror outside the NYCA until the term of the Unforced Capacity sold in the Auctions has expired.
 - (x) Offeror shall hold, use, and assign any Unforced Capacity offered in the Auctions in accordance with the terms and conditions set forth in the ISO Services Tariff and the ICAP Manual.
 - (xi) Other than providing the information required by this Sale Agreement, Offeror has not amended or changed this Sale Agreement in any way to make it different from the Sale Agreement attached to the ICAP Manual as Attachment G.
- (b) All representations and warranties contained herein shall be deemed to be made again as of the purchase and sale of the Unforced Capacity contemplated in this Sale Agreement.

4. Indemnification; Release of Liability.

- (a) Offeror 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 Offeror'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) Offeror 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 Offeror as follows:

Name: _____
Address: _____
Phone: _____
Fax: _____
E-mail: _____

- (b) All representations, warranties, covenants, and obligations of this Sale Agreement shall survive the sale of the Unforced Capacity by the Offeror.
- (c) The Offeror's Offer 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 Sale Agreement are intended for the benefit of the Offeror and the NYISO and may be enforced directly by the NYISO against Offeror or by the Offeror against the NYISO.
- (e) This Sale 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 Sale Agreement has been submitted as of the date first above written.

NAME OF OFFEROR:

By: _____

Name: _____

Title: _____

New York Independent System Operator, Inc.

By: _____

Name: _____

Title: _____