

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Devon Power LLC, et al.

)

Docket No. ER03-563-_____

**SETTLEMENT AGREEMENT
RESOLVING ALL ISSUES
(March 6, 2006)**

This settlement agreement (the "Settlement Agreement") is entered into by and among the following entities (individually a "Settling Party" and collectively the "Settling Parties"):

American National Power, Inc.
Associated Industries of Massachusetts
Boston Generating, LLC
Calpine Eastern Corporation
Calpine Energy Services, L.P.
Cape Wind Associates, LLC
Central Vermont Public Service Corporation
Connecticut Department of Public Utility Control
The Connecticut Light and Power Company
Connecticut Municipal Electric Energy Cooperative
Connecticut Office of Consumer Counsel
Conservation Services Group
Consolidated Edison Energy, Inc.
Dominion Energy Marketing, Inc.,
Dominion Nuclear Connecticut, Inc.
Dominion Resources, Inc.,
Duke Energy North America, LLC
Energy Management, Inc.
EnerNOC, Inc.
Entergy Nuclear Generation Company
Entergy Nuclear Vermont Yankee, LLC
Exelon Generation Company, LLC
Exelon New England Holdings, LLC
Fitchburg Gas & Electric Light Company
FPL Energy, LLC
Granite Ridge Energy, LLC
HQ Energy Services (U.S.) Inc.
ISO New England Inc.
Lake Road Generating Company, LP
Long Island Power Authority (LIPA)
MASSPOWER
Milford Power Company, LLC

Mirant Americas Energy Marketing, LP
Mirant Canal, LLC
Mirant Kendall, LLC
Mystic Development, LLC, Mystic I, LLC, and Fore River Development, LLC
National Grid USA (on behalf of itself and its subsidiaries that are intervenors in this proceeding)
NEPOOL Participants Committee
New Hampshire Electric Cooperative, Inc.
New Hampshire Office of Consumer Advocate
New Hampshire Public Utilities Commission
NRG (Devon Power, LLC, Middletown Power LLC, Montville Power LLC, Norwalk Harbor, LLC, and NRG Power Marketing)
Pinpoint Power
Public Service Company of New Hampshire
RI Division of Public Utilities and Carriers
RI Public Utilities Commission
Select Energy
Semptra Trading
TransCanada Power Marketing Limited
The United Illuminating Company
Vermont Department of Public Service
Vermont Public Power Supply Authority
Vermont Public Service Board

The Settling Parties hereby agree as follows:

1. **AGREEMENT REGARDING EFFECTIVENESS.** This Settlement Agreement shall become effective when the Federal Energy Regulatory Commission ("FERC") by order approves this Settlement Agreement in its entirety without modifications or conditions or with such modifications or changes as are agreed to by the Settling Parties in accordance with Section 2 below (the "Effective Date").
2. **AGREEMENT REGARDING TERMINATION.** If the FERC does not approve this Settlement Agreement by June 30, 2006, this Settlement Agreement shall terminate unless the Settling Parties agree to an extension. If the FERC by order approves this Settlement Agreement conditioned on the modification of any of the terms of this Settlement Agreement (a "Conditional Approval Order"), the Settling Parties shall confer and negotiate in good faith to restore the balance of risks and benefits reflected in this Settlement Agreement as executed. Any such renegotiated Settlement Agreement shall be filed with the FERC. If no agreement can be reached within thirty calendar days of the date of the issuance of the Conditional Approval Order and unless all of the Settling Parties agree to extend the time period for such negotiations, this Settlement Agreement shall terminate.
3. **AGREEMENTS REGARDING DEVELOPMENT AND FILING OF MARKET RULES.**
 - A. On or before October 1, 2006, the ISO New England Inc. ("ISO"), pursuant to its authority under Section 205 of the Federal Power Act ("FPA"), shall file with the FERC necessary changes to the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3 (the "Tariff") to implement the Transition Period as defined in Section 11, Part VIII of this Settlement Agreement. On or before February 15, 2007, the ISO, pursuant to its authority under Section 205, shall file with the FERC necessary changes to the Tariff to implement the Forward Capacity Market as described in Section 11, Parts I through VII and Part IX of this Settlement Agreement.
 - B. The Market Rules shall be consistent with, and in furtherance of, all the terms contained in this Settlement Agreement as modified by the Settling Parties pursuant to Section 2 of this Settlement Agreement and approved by the FERC. Each Settling Party retains the right to challenge the provisions of the Market Rules that address the terms of this Settlement Agreement only on the basis that they contain provisions that are either inconsistent with or not required by this Settlement Agreement. The Settling Parties retain all rights under the FPA with respect to the provisions of the Market Rules that do not address the terms of this Settlement Agreement.

- C. The process for determining the Installed Capacity Requirement ("ICR") for the first Commitment Period shall be reflected in a filing with the FERC in the fourth quarter of 2006 for FERC action, as appropriate, no later than the second quarter of 2007. Such filing shall reflect the understanding that this schedule is intended to enable a filing of the ICR values for use in the first Forward Capacity Auction ("FCA") by early in the third quarter of 2007 for FERC acceptance or approval by October 2007. All Settling Parties retain their rights under the FPA to respond to any such filing.
- D. All filings pursuant to this Section 3 shall be subject to the stakeholder process for Market Rules that provides for consultation with state utility regulatory agencies.

4. AGREEMENTS REGARDING CHANGES TO THE SETTLEMENT AGREEMENT AND MARKET RULES.

- A. From March 6, 2006 through the earlier of September 5, 2008 or the date on which the prices from the second FCA become final (the "Waiver Period"), the Settling Parties waive their rights under Section 206 of the FPA to seek to modify the terms of this Settlement Agreement or, except as provided in Section 3.B, the Market Rules approved or accepted by the FERC to implement the Forward Capacity Market. Except as provided in Section 4.C, during the Waiver Period, the ISO shall retain its authority under Section 205 of the FPA to file modifications of the Market Rules that address the terms of the Settlement Agreement; where the ISO makes such a filing, the ISO must demonstrate to the FERC that failure to implement the proposed change in the Market Rule would have a negative effect on (1) system reliability or security, or (2) the competitiveness or efficiency of the Forward Capacity Market or forward reserve market. If the ISO makes such a filing, then the Settling Parties shall retain all rights to challenge the modification proposed by the ISO before the FERC.
- B. After the Waiver Period, the Settling Parties shall have the rights provided by law with respect to seeking to change this Settlement Agreement or the Market Rules that address the terms of the Settlement Agreement, except as provided in Section 4.C.
- C. From the Effective Date, absent the agreement of all Settling Parties to the proposed change, the standard of review for: (i) challenges to the Capacity Clearing Prices derived through the FCA and prices resulting from reconfiguration auctions provided for in the Settlement Agreement and in the Market Rules addressing the terms of the Settlement Agreement that are approved or accepted by the FERC pursuant to Section 3, and (ii) proposed changes to Section 11, Part VIII below (Agreements Regarding Transition Period) and the Market Rules implementing that part, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350

U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine), whether the change is proposed by a Settling Party, a non-Settling Party, or the FERC acting *sua sponte*. This Settlement Agreement does not impose the Mobile-Sierra standard on any provision of this Settlement Agreement or the Market Rules that address the terms of the Settlement Agreement except as expressly provided in this Section 4.C.

5. **AGREEMENTS REGARDING ISO REPORTING.** No later than 180 days after the second FCA is conducted, the ISO's Internal Market Monitoring Unit ("Market Monitor") shall file with FERC and post to the ISO's website a full report analyzing the operations and effectiveness of the Forward Capacity Market. Thereafter, the Market Monitor shall report on the functioning of the Forward Capacity Market in its annual markets report submitted to FERC pursuant to Section 11.3 of Appendix A to Market Rule 1.
6. **AGREEMENTS AS TO SCOPE OF SETTLEMENT.** This Settlement Agreement resolves all of the issues raised in Docket Nos. ER03-563-030 and ER03-563-055 before the FERC by the Settling Parties.
7. **NO ADMISSIONS.** The Settling Parties are entering into this Settlement Agreement to resolve their disputes in Docket Nos. ER03-563-030 and ER03-563-055 before the FERC as specified herein and nothing in this Settlement Agreement, including the January 31, 2006 vote on the term sheet (the "Term Sheet"), is intended by a Settling Party to reflect an admission regarding the merits of its own case or arguments or of another Settling Party's case or arguments on any of the settled issues. Neither support for this Settlement Agreement, nor the Term Sheet relating hereto, nor the submission of this Settlement Agreement and the concurrence in, or failure to comment on, the described settlement, shall constitute an admission by any Settling Party that any allegations or contentions in Docket Nos. ER03-563-030 and ER03-563-055 were true or valid or that any Settling Party had acted consistent with, or contrary to, contract provisions, the FPA, or any other federal or state law or regulation.
8. **CONFIDENTIALITY.** The discussions among the parties related to this Settlement Agreement and the Term Sheet took place within the context of settlement discussions concerning matters covered herein. Discussions leading up to this Settlement Agreement and the Term Sheet, the finalization of this Settlement Agreement and the Term Sheet, and any drafts of those documents, and any other documentation that reflects the negotiation of this Settlement Agreement and the Term Sheet are privileged and confidential in accordance with the applicable sections of the FERC's Rules of Practice and Procedure, the Federal Rules of Evidence and any other applicable rules of evidence.
9. **ADDITIONAL AGREEMENTS.**

- A. FERC's approval of this Settlement Agreement shall not constitute approval of or precedent regarding any principle or issue in Docket Nos. ER03-563-030 and ER03-563-055 before the FERC.
 - B. This Settlement Agreement constitutes the Settling Parties' complete and exclusive statement of the terms of this Settlement Agreement. All prior written and oral understandings, offers or other communications of every kind pertaining to the subject matter of this Settlement Agreement, including without limitation the Term Sheet, are hereby superseded.
 - C. This Settlement Agreement may be executed in any number of counterparts, each having the same force and effect as the original.
 - D. The Table of Contents contained in this Settlement Agreement and the headings of the sections and parts of this Settlement Agreement are intended for convenience only and shall not be deemed to be part of or considered in construing this Settlement Agreement
10. **DEFINITIONS.** Attachment A to this Settlement Agreement contains a list of all capitalized terms as defined or referenced therein.
11. **AGREEMENTS REGARDING THE ESTABLISHMENT OF A FORWARD CAPACITY MARKET AND TRANSITION.** A Forward Capacity Market shall be established in New England as described in Parts I through VII and Part IX below, with a transition to that market as provided in Part VIII below.
- I. **Agreements Regarding the Establishment and Timing of the Forward Capacity Market.**
 - A. **Procurement by Forward Capacity Auction and Planning Period.** As set forth in and subject to Part I.C (Timing of First Auction) and Part III (Agreements Regarding Auction Mechanics), the ISO shall conduct an annual FCA to procure 100 percent of the ICR for the Power Year beginning three years later, with ICR calculated taking into account forecast error, as appropriate.
 - B. **Commitment Period.** Capacity clearing in an FCA shall be entitled to receive capacity payments and shall have the rights and obligations specified below, for a period of either one year in duration (corresponding to the Power Year for which the FCA is held) or up to five years in duration (beginning with the Power Year for which the FCA is held) (the "Commitment Period"), as described in more detail in Part II (Agreements Regarding Qualification).

- C. **Timing of First Auction.** The ISO shall use best efforts to conduct the first FCA no later than the end of the first quarter of 2008 for the first Commitment Period beginning June 1, 2010, and will provide reasonable notice of the first FCA.

II. Agreements Regarding Qualification.

- A. **Generally.** Each potential capacity Resource (Existing, New, or Imports) must submit qualification information to the ISO no later than the relevant bid qualification deadline, which shall be determined during the development of Market Rules. The bid qualification deadline for New Capacity and Imports shall be approximately six weeks after the ISO's posting of De-list Bids, Permanent De-list Bids and Export Bids from Existing Capacity in accordance with Part III (Agreements Regarding Auction Mechanics).

- B. **New Capacity.** New Capacity may, during the qualification process, select a Commitment Period of up to five years, in one-year increments, provided that the Resource meets the criteria in this Part II.B. New Capacity Resources shall have a Qualified Capacity equal to its bid MWs subject to demonstration of at least that capacity in the qualification process.

- 1. **Definition of New Capacity.** To be considered New Capacity, a Resource must: (i) never have been "listed" as a capacity Resource (i.e., counted as capacity) in the New England capacity markets; or (ii) meet one of the criteria in Part II.B.2 below.

- 2. **Thresholds for Previously Listed Capacity to be Considered New Capacity.** A Resource, which had previously been listed as a capacity Resource in the New England capacity markets, shall be considered New Capacity provided it meets at least one of the following conditions:

- a. where new investment in a unit that is Existing Capacity results in an increase in output greater than 20 percent of Summer Seasonal Claimed Capability or 40 MW, whichever is greater;
- b. at owner's election, i) investment in the Resource for the purposes of re-powering will be equal to or greater than \$200 (plus appropriate cost escalation) per net kilowatt installed project cost, or ii) investment in the Resource for the purpose of compliance with environmental regulations or permits will be equal to or greater than \$100 (plus appropriate cost escalation) per net kilowatt installed project cost.
- c. at owner's election, incremental output from an Existing Capacity Resource shall be considered New Capacity for the incremental

amount of output if the output increase is equal to or greater than two percent of the Resource's Summer Seasonal Claimed Capability, but less than the requirements in part a. above. Additionally, if Existing Capacity is derated for three or more years, any capacity over the derated amount that is re-established shall be considered New Capacity. Provided, however, that investment in the Resource for such purposes shall be equal to or greater than \$200 (plus appropriate cost escalation) per net kilowatt installed cost for the incremental output.

- d. additional thresholds for New Capacity treatment may be addressed in the stakeholder process that provides for consultation with state utility regulatory agencies (e.g., new source environmental review and Resources with a new "placed in service date" for purposes of Section 45K (formerly Section 29) of the Internal Revenue Code of 1986).

3. **Eligibility Criteria.** In order for any Resource to be eligible to bid in the FCA as New Capacity, including to the extent applicable New Capacity under Parts II.B.2, it must meet the qualification requirements listed in a. through d. below to the satisfaction of the ISO. Qualification criteria may vary based on the size, technology, complexity, et cetera of the Resource. Such qualification requirements shall be further detailed as part of the development of Market Rules. A New Resource that intends to submit a New Capacity Bid below 0.75 the Cost of New Entry ("CONE") shall submit sufficient information for the Market Monitor to evaluate the reasonableness of the bid consistent with Part III.H.2.

- a. **Site Control.** The project sponsor shall demonstrate that it has control over the site for its project over the term of the intended Commitment Period, by providing documentation to the ISO showing that (i) the project sponsor is the owner in fee simple of the real property on which the project will be located; (ii) the project sponsor holds a valid written leasehold interest in the real property on which the project will be located; (iii) the project sponsor holds a valid written option, exercisable solely by the project sponsor or its assignee, to purchase or lease property on which the project will be located; or (iv) the project sponsor holds a duly executed written contract to purchase or lease the real property on which the project will be located.
- b. **Critical Path Schedule.** The project sponsor must provide a critical path schedule for their project with sufficient detail to allow the ISO to evaluate the feasibility of the project being built and the

feasibility that it will be put into service no later than the start of the Commitment Period, as set forth in Part II.B.4.

- c. **Interconnection Study.** If applicable for a specific Resource, while a full and complete System Impact Study is not a requirement to participate in the FCA, at a minimum, an initial interconnection analysis is required. The ISO and the Reliability Committee shall work out specifics with respect to the performance of such initial interconnection analysis and selection criteria (including auction details) for multiple projects when only a subset of such projects can be selected in the FCA due to overlapping interconnection impacts.
 - d. **Financial Assurance.** Bidders must satisfy the Financial Assurance requirements for New Capacity specified in Part II.G.
 - 4. **Milestone Criteria.** For purposes of consideration as New Capacity in the FCA, several key milestone dates shall be included in a critical path schedule as a means of demonstrating that the Project will come on-line prior to the delivery date for the relevant Commitment Period. The ISO shall evaluate the milestone schedule for reasonableness in accordance with processes defined in development of the applicable FCA Market Rules. The key milestone dates may include:
 - a. Site control achieved;
 - b. Major permits applied for;
 - c. Major permits obtained;
 - d. Construction financing closing;
 - e. Interconnection Study completed;
 - f. Equipment ordered;
 - g. Foundations laid;
 - h. Commencement date of operations.
 - 5. **Timing.** A Resource intending to participate in an annual FCA as New Capacity must submit its qualification package before the start of the FCA at a time to be determined in the Market Rules.
- C. **Import and Export Capacity.** Import Capacity bids shall only be eligible for a one-year Commitment Period, and qualification requirements shall depend on whether the Import Capacity is committed under a multi-year contract prior to the qualification deadline. The qualification deadline for Import Capacity shall be the same as for New Capacity, and the qualifications deadline for an Export Bid shall be the same as for an Existing Capacity De-list Bid.

1. **Definitions of Import and Export Capacity.**

- a. **Existing Import Capacity.** Capacity that a party wishes to import in the FCA pursuant to a multi-year contract entered into before the qualification deadline to provide capacity Resources during the Commitment Period from outside the New England Control Area shall be Existing Import Capacity and shall be considered Existing Capacity for purposes of Part III.D. Provided, however, that during the first year of a multi-year contract such Existing Import Capacity in the FCA shall be considered New Import Capacity for purposes of Part III.D. Multi-year contracts existing as of the Effective Date will be treated as Existing Capacity for the purposes of the first FCA.
- b. **New Import Capacity.** Capacity that a party wishes to import in the FCA but without a multi-year contract before the qualification deadline to provide capacity Resources during the Commitment Period from outside the New England Control Area shall be New Import Capacity and shall be considered New Capacity offers for purposes of Part III.D.
- c. **Export Capacity.** Any Resource within the New England Control Area seeking to submit a bid to export all or part of its capacity in the FCA or selling its De-listed Capacity to a buyer outside the Control Area following the FCA shall be Export Capacity. Only the portion of the Resource seeking to export shall be Export Capacity.

2. **Eligibility Criteria.**

- a. In the qualification process, Existing Import Capacity bidders must submit to the ISO documentation of a multi-year contract to provide capacity Resources for the Commitment Period and must meet the same eligibility criteria specified in Part II.D.2.a., b., and c. for Existing Capacity, including the Financial Assurance Requirements for Existing Capacity in Part II.G.2.a.
- b. New Import Capacity Resources must meet the qualification requirements listed in i. and ii. below to the satisfaction of the ISO. Such qualification requirements shall be further detailed as part of the development of Market Rules. New Import Capacity that intends to submit a bid below 0.75 CONE must also submit sufficient information for the Market Monitor to evaluate the reasonableness of the bid consistent with Part III.H.2.

- i. New Import Capacity bidders must comply with Market Rules that require the New Import Capacity to be backed by a physical unit or an external control area before the start of the Commitment Period.
 - ii. New Import Capacity bidders must satisfy all of the Financial Assurance requirements for New Capacity specified in Parts II.G.2.b and c.
 - c. Export Capacity Resources must meet the same eligibility criteria as applied to Existing Capacity in Part II.D.2.b. Export bids are subject to review by the Market Monitor, as provided for Existing Capacity in Parts III.D.2 and III.E.
- D. **Existing Capacity.** Existing Capacity shall have a Commitment Period of one year. An Existing Capacity Resource will have a Qualified Capacity for the FCA and annual reconfiguration auctions, except as provided in Part II.D.5, equal to its Summer Seasonal Claimed Capability as adjusted pursuant to Part II.D.4. below. All Existing Capacity shall be a capacity Resource in the FCA unless its Export, De-list, or Permanent De-list Bid is accepted or it submits an Administrative De-list Bid. With its information submitted for qualification, Existing Capacity must submit all Export, De-list and Permanent De-list Bids, other than Dynamic De-list Bids. Bids from Existing Capacity may be reviewed by the Market Monitor, as discussed below. The Market Rules that address the terms of this Settlement Agreement shall provide a means for Existing Capacity to trade or de-list (subject to a reliability review if required) the capacity differential between the summer and winter ratings, including trading contemplated by Part III.M.7 and Part III.P, unless sold in the FCA pursuant to Part II.D.5 below.
 - 1. **Definition of Existing Capacity.** Any Resource that does not meet any of the eligibility criteria for New Capacity as provided in Part II.B.3 or Import Capacity as provided in Part II.C.2.a or b. shall be considered to be Existing Capacity. Subject to ISO evaluation, for the purposes of the first FCA, any Resource that is under construction and within 12 months of its expected commercial operations date shall be treated as Existing Capacity. Any Resource that is not within 12 months of its expected commercial operations date at the time of the first FCA shall be treated as New Capacity, unless the Resource is required pursuant to contract or otherwise elects to be treated as Existing Capacity.
 - 2. **Eligibility Criteria.** Existing Capacity must submit documentation of the following as part of a qualification package:

- a. A Resource that is not submitting Export, De-list, or Permanent De-list Bids shall submit documentation as required by the Market Rules.
 - b. A Resource that intends to submit an Export, De-list, or Permanent De-list Bid above 0.8 CONE in the FCA shall submit sufficient documentation for the Market Monitor to evaluate the bid pursuant to Part III.E.
 - c. A Resource that intends to submit a Permanent De-list bid in the FCA shall submit sufficient documentation for the Market Monitor to evaluate the bid pursuant to Part III.E., and for the ISO to evaluate the reliability impact of the permanent delisting.
 - d. A Resource seeking to qualify as New Capacity in accordance with Part II.B.2 above, for either an incremental amount or for the full output of the Resource, shall be required to submit documentation in support of its request for New Capacity treatment. The ISO shall evaluate this documentation in accordance with the Market Rule provisions to validate the request for New Capacity treatment.
 - e. **Financial Assurance.** Bidders must satisfy the Financial Assurance requirements for Existing Capacity specified in Part II.G.
- 3. **Timing.** An Existing Capacity Resource intending to submit any Export, De-list, Permanent De-list, or Administrative De-list Bid (other than a Dynamic De-list Bid) in the FCA as Existing Capacity must submit its qualification package before the start of the FCA, at a time to be determined in the Market Rules.
 - 4. **Partial Delisting.** An Existing Capacity Resource may submit De-list Bids for all or part of its Existing Capacity, provided that the portion of the unit which it chooses to "list" is at least equal to the EcoMin level of the unit.
 - 5. **Bids Composed of Separate Resources.** An annual bid can be composed of separate Resources in different months, if the Resources together, based on their monthly ratings, can meet or exceed the amount of the offer throughout the year, and subject to the following conditions in subparts 5.a through 5.f below. In the Winter Period, Resources may use Summer Seasonal Claimed Capability not taken in the annual FCA or the difference between their Winter and Summer Seasonal Claimed Capability, provided that under no circumstances can the same MWs be counted twice in the same FCA.

- a. If a bid is composed of separate Resources, and is intended to meet the "Local Sourcing Requirement" in an import-constrained Capacity Zone then each Resource comprising the bid must be located in that import-constrained Capacity Zone. Local Sourcing Requirement means the portion of the total capacity requirement of the load in a Capacity Zone that must be purchased from Resources located within that Capacity Zone after taking into account all of the capacity that can be reliably imported into the Capacity Zone.
- b. If a bid is composed of separate Resources, and is intended to meet the Local Sourcing Requirement in the Rest-of-Pool Capacity Zone, then each Resource comprising the bid must be located in a Capacity Zone that is not export-constrained.
- c. If a bid is composed of separate Resources, and is for capacity in an export-constrained Capacity Zone, then each Resource comprising the bid must be located inside the export-constrained Capacity Zone.
- d. Bids cannot be composed of separate Resources for the same month.
- e. A bid composed of separate Resources shall be treated for purposes of clearing in the FCA or a reconfiguration auction as New Capacity, Existing Capacity, or Import based on the Resource providing summer capacity.
- f. In instances where the export constraint for a Capacity Zone binds in the FCA, and such an offer is accepted within that Capacity Zone, Part V.C.4.c shall not apply to such capacity Resource.

E. Intermittent and Demand Resources.

1. Intermittent Resources.

- a. For the Forward Capacity Market, a distinct method shall be developed to determine the Qualified Capacity of wind, solar and run-of-river hydro resources ("Intermittent Resources") in a manner that recognizes contribution to system reliability over the Winter and Summer Periods. So that it can be appropriately considered in the ICR determinations for the Forward Capacity Market, such method shall be developed by the end of the fourth quarter of 2006 through the stakeholder process that provides for

consultation with state utility regulatory agencies. Intermittent technology resources other than wind, solar and run-of-river hydro resources may request to be considered in the definition of Intermittent Resources for purposes of this part provided that such resources remain subject to the same method for determining Qualified Capacity. Any such request shall also be subject to the stakeholder process that provides for consultation with state utility regulatory agencies.

- b. The process described above for developing a methodology for determining the Qualified Capacity of an Intermittent Resource shall also consider how to address poorly performing Intermittent Resources, since these types of Resources are not subject to availability penalties and/or poor performing Resource treatment as other Resources. The Market Rules will address how Intermittent Resources will be defined as New Capacity in the FCA.

2. Demand Resources.

- a. In the Forward Capacity Market, Real Time Demand Response shall remain as qualifying capacity Resources subject to Market Rule 1, Appendix E and the Load Response Manual. As such, the role of demand response Resources in the market shall continue to evolve as Market Rule 1, Appendix E and the Load Response Manual are revised.
- b. For the Forward Capacity Market, a distinct method shall be developed to allow energy efficiency and demand response resources (other than Real Time Demand Response) to be fully integrated as Qualified Capacity in the Forward Capacity Market. So that it can be appropriately considered in the ICR determination for the Forward Capacity Market, such method shall be developed by the end of the fourth quarter of 2006 through the stakeholder process that provides for consultation with state utility regulatory agencies. The method shall consider that some Resources may best be integrated by ensuring that price signals are correct. Such Qualified Capacity shall not be subject to the same availability penalties and/or poorly performing Resource treatment as other Resources, so the method shall also propose how to address poorly performing demand response and energy efficiency Resources. The Market Rules will address how demand Resources will be defined as New Capacity in the FCA.

F. Self-Supplied FCA Resources.

1. **Qualification.** Prior to each FCA, a Resource or a portion of a Resource may be designated by a Load-Serving Entity ("LSE") pursuant to Market Rules as a self-supplied FCA Resource ("Self-Supplied FCA Resource"). The Self-Supplied FCA Resource must meet the same qualification standards as any other Resource that is allowed to participate in the FCA. The total quantity of designated Self-Supplied FCA Resources may not exceed the projected share of the ICR for the LSE designating that Resource pursuant to Market Rules. To be considered a Self-Supplied FCA Resource, that Resource must be offered into the FCA. If designated as a Self-Supplied FCA Resource, the Resource will clear the FCA pursuant to Part III.O (Agreements Regarding Auction Mechanics – Self-Supply Option) and offset an equal number of megawatts of the projected share of ICR in the Commitment Period for the LSE designating that Resource.
2. **Locational Issues.** In order to qualify as a Self-Supplied FCA Resource for purposes of fulfilling a Local Sourcing Requirement applicable to a load in an import-constrained region, the Self-Supplied FCA Resource must be located in the same Capacity Zone as the associated load, unless the self-supplied resource is a Pool-Planned Unit with a special allocation of Capacity Transfer Rights ("CTRs") up to the number of allocated CTRs. Although the ISO will continue to model any such Pool-Planned Units in their actual location, the combination of the physical asset and the CTRs will offset the financial obligation of the self-supplier.

G. Financial Assurance. The following general requirements shall apply to the FCA and annual reconfiguration auctions. Except where noted, the retention and return of financial assurance and the types of acceptable financial assurance will be governed by the Financial Assurance Policy ("FAP"). Financial assurance requirements for Municipal Market Participants will be consistent with Section III of the FAP.

1. **Load-Serving Entity Obligation.** The financial assurance requirement for capacity payments for each month of the Commitment Period will be equal to the amount that represents the actual credit exposure of the LSE (e.g., the amount due from the LSE obligated to make those payments on the next invoice to be issued by the ISO).
2. **Supplier Obligation**
 - a. **Existing Capacity:** Existing Capacity generally shall be subject to the Financial Assurance requirements contained in the FAP. In

addition, except where the capacity obligation has been transferred to another Resource, Existing Capacity that has been allowed to retire under Section I.3.9 of the Tariff and will retire at the end of the relevant Commitment Period shall be required to provide additional financial assurance equal to two and one-half times the FCA Payment for a month. The financial assurance obligation under this part shall arise five business days before the start of the applicable Commitment Period, and the Financial Assurance shall be returned in accordance with the FAP.

- b. **New Capacity:** In order to submit a bid in an FCA, New Capacity must be qualified pursuant to Part II.B.3 above and provide financial assurance at the time of its qualification (the "Deposit") equal to \$2/kW times the amount of kilowatts to be bid as New Capacity into the FCA. If that New Capacity's bid is accepted in the FCA, the Deposit will be applied toward the New Capacity's financial assurance obligation, described below. If that New Capacity bid is rejected, the Deposit will be returned to the New Capacity. New Capacity that receives an award in an FCA must provide financial assurance in the following amounts:
 - i. Within five business days following announcement of the winning bidders: the CONE (on a \$/kW-month basis) for that FCA multiplied by the number of kW of capacity awarded (the "New Capacity FA Amount");
 - ii. At least fifteen days prior to the next annual FCA after the FCA in which such award was made: an additional amount equal to the New Capacity FA Amount (for a total of two times the New Capacity FA Amount); and
 - iii. At least fifteen days prior to the second annual FCA after the FCA in which such award was made: another additional amount equal to the New Capacity FA Amount (for a total of three times the New Capacity FA Amount).

The New Capacity FA Amount for the first FCA will be \$7.50 per kW, as provided in Part III.F and shall be updated annually before each FCA in accordance with Part III.F. Therefore, for example, a new 100 MW generating unit that has a bid accepted as New Capacity in the first FCA would have to provide \$750,000 of financial assurance within five days following announcement of the winning bidders. That unit would have to provide another \$750,000 of financial

assurance at least fifteen days prior to the FCA the following year (for a total financial assurance obligation of \$1,500,000). That unit would have to provide another \$750,000 at least fifteen days prior to the next FCA (for a total financial assurance obligation of \$2,250,000).

If New Capacity (i) fails to provide the required financial assurance on any required date for any reason or (ii) fails to meet a qualification milestone as set forth in Part II.B.4 and does not appropriately cure such failure within a period of time to be determined in the Market Rules, it shall lose its awarded capacity to the extent not provided (which will be placed in the next appropriate reconfiguration auction) and it shall forfeit any financial assurance previously provided by it with respect to that award. The ISO and the NEPOOL Budget and Finance Subcommittee shall reconsider these financial assurance requirements no later than five years after the first FCA.

- iv. Once the New Capacity is declared commercial and tested for its capacity rating, its financial assurance obligation shall be released and it shall have the same financial assurance requirements as Existing Capacity. If New Capacity is only capable of delivering less than the amount accepted in the FCA, then the portion of its financial assurance associated with the shortfall shall be forfeited.
- v. A default before the relevant Commitment Period or a failure to be declared commercial as of the Commitment Period, if not cured (including cover) shall result in a forfeiture of the financial assurance, and there shall be no further coverage for such default under the Billing Policy. Such forfeited amount shall be used to reduce capacity payments by load. Any shortfall in capacity resulting from a default shall be included in a subsequent reconfiguration auction. If New Capacity is not commercial as of the Commitment Period, it shall have the right to cover the default for a period of up to two years. After such a period, following consultation between the Resource and the ISO, the ISO shall have the right to terminate the Resource's award under the FCA for the remaining portion of the Commitment Period and, at the same time terminate the Interconnection Agreement. The ISO shall make a filing

with the FERC reflecting such terminations. Should New Capacity challenge such termination at FERC and also continue to cover its default, then it shall retain its place in the queue and forfeiture of its financial assurance shall be subject to a final FERC ruling

- c. Financial assurance requirements for imports will be covered in the Market Rules in a manner that is consistent with Part II.C.2 above and II.G.2.b. New Import Bids will meet New Capacity financial assurance requirements until the New Import Capacity is backed by a physical unit or an external control area, and thereafter it shall have the same financial assurance requirements as Existing Capacity.

3. Price and Payment Certainty and Finality.

- a. The capacity delivery obligations of suppliers, the payment obligations of LSEs and the FCA process and rules shall be documented in the Tariff. The Tariff shall include language stating that a change in the Tariff filed after FCA results have been accepted or approved by the FERC will not change those FCA results and also documenting terms and conditions consistent with this Settlement Agreement that apply to capacity clearing in the FCA for the Commitment Period of that FCA, including at a minimum the following: (i) payment terms (timing, immediately available funds, process for disputed payments); (ii) financial assurance requirements; (iii) events of default and other events that could lead to termination of the obligations or suspension of capacity payments; (iv) the right for New Capacity, or its lender(s) if applicable, to cure a default (including any default resulting from bankruptcy of the owner of New Capacity), which in the case of a lender cure would not require the lender to become the owner of the plant; (v) notice of any event of default to the owner of New Capacity and its lender(s); (vi) the capacity obligations imposed on the New Capacity and means for determining whether such obligations have been satisfied; (vii) damages to be paid in event of failure to perform and recourse for non-payment; and (viii) the right for the New Capacity owner to pledge moneys due to New Capacity to lenders and to direct payment of such moneys into a project revenue account and that other rights of New Capacity owners can be pledged. The Tariff shall also provide that an award in a FCA is binding upon, and accrues to the benefit of, successors and assigns owning that Resource.

- b. The ISO shall promptly file the FCA results including the detail of the awards and the price, together with appropriate documentation as to the competitiveness of the FCA, with the FERC under Section 205, or make such other filing as is necessary to establish the FCA results as filed rates. Any objection to those results must be filed with the FERC within 45 days after the ISO's filing. The filing of a timely objection at the FERC will be the exclusive means of challenging the FCA results.

"Appropriate documentation as to the competitiveness of the FCA" may include, but may not necessarily be limited to, the certification of the Auction Administrator (whether the ISO or a contractor engaged for that purpose), that (i) all bidders in the FCA have satisfied the qualification requirements established in the Tariff and applicable Market Rules and Manuals and business practices issued in accordance therewith, and (ii) that the FCA was conducted in accordance with the applicable rules and procedures. Further detail to be developed in the Market Rules.

4. **Default Allocation.** To the extent that any default is not cured (including in the reconfiguration auction), any resulting cash shortfall shall be allocated according to the Billing Policy.

III. Agreements Regarding Auction Mechanics.

A. Zonal Selection Criteria and Locational Pricing. Capacity Zones shall be defined in advance of each FCA.

1. Capacity Zones shall be determined before the FCA based on an identification of transmission limits that may bind in the FCA.
2. Transmission interface limits used in the process of selecting Capacity Zones shall include all existing transmission lines and proposed transmission lines that the ISO determines will be in service as of the relevant Commitment Period.
3. Before the start of each FCA, the then-forecasted capacity installed in a Capacity Zone, including Resources (Existing Capacity, New Capacity and Import Capacity accepted in prior FCAs or reconfiguration auctions and obligated for the relevant Commitment Period), less Permanent De-list Bids accepted in prior FCAs and Export Bids accepted in prior FCAs and obligated in the Commitment Period, shall be compared to the Zone's then-forecasted Local Sourcing Requirement in the first year of the Commitment Period.

For the first FCA, any entity that believes capacity under construction will be complete for the first Commitment Period and therefore should be included in the process of selecting Capacity Zones must satisfy the eligibility criteria, where applicable, of Part II.B.3.

4. For an import-constrained zone, if the then-forecasted capacity, including Resources (Existing Capacity, New Capacity and Import Capacity obligated for the relevant Commitment Period), less Permanent De-list Bids accepted in prior FCAs and Export Bids accepted in prior FCAs and obligated in the Commitment Period in the zone is greater than its then-forecasted Local Sourcing Requirement before the start of each FCA, the zone shall not be a separate zone in the FCA.
5. Export-constrained zones are modeled in the FCA.
6. Where zonal separation is determined to exist, CTRs shall be awarded as set forth in the Initial Decision, provided that any special allocation of CTRs to LSEs in the NEMA zone shall expire on December 31, 2040. In the event that the NEMA zone either is or is forecast to become a separate zone for FCA purposes, National Grid agrees to discuss with MMWEC and Wellesley, Reading and Concord ("WRC") any proposal by National Grid to develop cost effective transmission improvements that would mitigate or alleviate the import constraints and to work cooperatively and in good faith with MMWEC and WRC regarding any such proposal. MMWEC and WRC agree to support any proposals advanced by National Grid in the Regional System Planning ("RSP") process to construct any such transmission improvements, provided that MMWEC and WRC determine that the proposed improvements are cost effective (without regard to CTRs) and will mitigate or alleviate the import constraints.
7. Changes to the definition of zones shall be subject to the stakeholder process that provides for consultation with state utility regulatory agencies.
8. Where zonal separation is determined to exist, Market Rules shall specify a process for an Export both from or through the import-constrained zone over tie lines to external regions.

B. Installed Capacity Requirement. Subject to Section 3.C, each year, in advance of the FCA, the ISO shall submit to FERC for acceptance or approval the ICR for the New England system and the Local Sourcing Requirement for each year for each Capacity Zone, accounting for relevant transfer limits, through the Power Year beginning three years later. The ICR purchased shall be based on the Summer Seasonal Claimed Capability. Capacity to meet the ICR shall be based

on that Resources' Summer Seasonal Claimed Capability except for Resources specified in Parts II.D.4, II.E, and VI (regarding external Resources).

1. ICR will be calculated taking Resource availability into account. As experience permits, the availability metric in Part V.C. below will be incorporated.
2. If the ICR shows a consistent bias over time, either high or low, the ICR forecast process shall be adjusted to eliminate the bias.
3. The ICR shall be calculated assuming appropriate tie benefits, if any, from adjacent control areas.
 - a. The MW value of the tie benefits over the HQ Phase I/II tie will continue to be calculated in the manner that is currently used to determine the Hydro Quebec Interconnection Capability Credits ("HQICCs") and will also continue to be allocated to the Interconnection Rights Holders ("IRH") or their designees in proportion to their Use Rights, in the form of reduced capacity requirements. There shall be no double counting of the HQ Phase I/II tie benefits. This calculation and allocation methodology of the HQ Phase I/II tie benefits will continue unless and until a modification thereto is accepted by the FERC, provided that nothing in this Settlement Agreement, specifically including this section, Part III.D.4.a and Part VIII.K., will constitute precedent regarding the reasonableness of (i) such modification, or (ii) the manner of calculating or allocating the Phase I/II tie benefits. Nothing in this Settlement Agreement prejudices the rights of any party to seek to modify or challenge the calculation or allocation methodology of HQ Phase I/II tie benefits for the period beginning after the end of the Transition Period, as defined in Part VIII.A.
 - b. The total amount of accepted Import Bids over the Phase I/II tie plus approved HQICCs cannot exceed the approved Phase I/II transfer limit. If the accepted Import Bids exceed the difference between the approved Phase I/II transfer limit and the approved MW of HQICCs (the "HQI Excess"), the capacity requirement for those IRH or their designees that sold their transmission rights for the subject period will be increased by the difference between the total amount of accepted Import Bids and the HQI Excess. These capacity requirement increases will be allocated among the IRH or their designees in a manner to be determined by the IRH.

C. Amount of Capacity Purchased. One hundred percent of the ICR, taking into account forecast error, as appropriate, except in certain instances where capacity to replace Export Bids, Permanent De-list Bids and De-list Bids is deferred to the reconfiguration auction (see Part III.D.2-3, and D.5), will be purchased in the FCA at prices up to two times CONE, subject to Part III below.

D. Forward Capacity Auction Offers.

1. **New Capacity Offers.** All offerors of New Capacity must satisfy the applicable requirements of Part II.B. In order to receive capacity payments during the Commitment Period, New Capacity must have been declared commercial and tested for its capacity rating.

2. **Offers From Existing Capacity.** All Existing Capacity must submit appropriate information in the qualification process as described in Part II.D.2. All De-list Bids above 0.8 times CONE from Existing Capacity, all Export Bids, and all Permanent De-list Bids must be submitted to the ISO before the bid qualification deadline to be considered in the FCA. All Permanent De-list and De-list Bids from Existing Capacity that are above 0.8 times CONE must also be submitted to the Market Monitor before the bid qualification deadline to be considered in the FCA. Full information about Permanent De-list Bids will be posted one day after the bid qualification deadline.

The quantity, price and zone of each De-List Bid above 0.8 times CONE will also be posted one day after the bid qualification deadline; if the bid is approved by the Market Monitor, full information will be posted. Authorized Persons of Authorized Commissions, as defined in Section 3.3 of the ISO New England Information Policy, will be provided confidential access to full information about posted De-list Bids upon request pursuant to Section 3.3 of the Information Policy.

3. **Permanent De-list Bids.** A Permanent De-list Bid shall be accepted if the Capacity Clearing Price falls below the Permanent De-list Bid price. If a capacity Resource's Permanent De-list Bid is accepted, the Resource shall not be eligible to receive Capacity Payments in the Commitment Period associated with the FCA or any subsequent FCA or reconfiguration auction, until such time as the Resource may meet the qualifications for New Capacity for a subsequent FCA. If a capacity Resource's Permanent De-list Bid is accepted, that Resource may still participate in all other markets according to the rules of those markets.

a. **Capacity to Replace Permanent De-lists.** Capacity needed to replace the capacity associated with an accepted Permanent De-list

Bid shall not be purchased in the FCA if the Capacity Clearing Price equals or exceeds 1.5 times CONE. Instead, the full amount of capacity requirement resulting from such accepted Permanent De-list Bids shall be advanced into subsequent reconfiguration auctions.

- i. For prices between 1.25 times CONE and 1.5 times CONE, the quantity of capacity requirement associated with Permanent De-lists replaced in the FCA increases pro-rata. The amount of capacity needed to replace capacity of an accepted Permanent De-list Bid that is not purchased in the FCA shall be purchased in subsequent reconfiguration auctions.
- ii. Permanent De-list Bids below 1.25 times CONE shall be eligible to set the price in the FCA. If accepted, the capacity requirements shall be replaced in full in the FCA.

4. **Import and Export Bids.** Full information about Import and Export Bids (name of submitter, quantity and interface) shall be published the day after offers are submitted.

- a. **Imports.** The sum of the tie benefits plus imports over the New York interface cannot exceed the approved transfer limits of the interface for the Forward Capacity Market. Similarly, the sum of the tie benefits plus imports over the New Brunswick interface cannot exceed the approved transfer limits of the interface for the Forward Capacity Market. Imports treated as capacity must become physical (i.e., backed by a physical unit or an external control area) prior to the time of delivery and must meet the same or comparable performance requirements as other capacity Resources in order to receive capacity payments.

The current capacity treatment within NEPOOL of firm imports of New York Power Authority ("NYPA") hydroelectric power, which is set forth in Section 3.4 and Appendix A of NEPOOL Manual No. 20 for Installed Capacity, shall be continued, such that NYPA firm import allocation recipients will be able to continue to claim capacity credit for these firm imports during the transition, in as close as possible a manner to its treatment today.

Imports shall be allowed over interfaces until the sum of the tie benefits plus imports equals the approved transfer limits on the relevant interface or the descending clock stops.

b. Exports.

- i. Export Bids offered into the FCA will be treated the same as De-list Bids except that they must also indicate the interface over which the capacity will be exported (e.g., Cross Sound Cable, Rest of Pool to New York, HQ Phase I and II, HQ Highgate, and New Brunswick). In assessing the reasonableness of an Export Bid, the Market Monitor shall take appropriate consideration of contracts and the revenue opportunities of Resources bidding to export.
- ii. Capacity needed to replace the capacity associated with an accepted Export Bid shall be treated the same as capacity associated with an accepted De-List Bid under Part III.D.5.a below.
- iii. Exports shall be allowed over interfaces until the interface limit constraints bind or the descending clock stops.
- iv. Exporting capacity, which has been accepted in a prior FCA or contracted prior to the implementation of the FCA, may Administratively De-list in the qualification process by demonstrating a contractual obligation to sell capacity outside of the New England Control Area for the Commitment Period. This action will be reviewed by the Market Monitor pursuant to rules to be developed.
- v. Export Bids are subject to rationing to the extent the external interface binds.

5. **De-list Bids.** Existing Capacity wishing to opt out of the capacity market in the Commitment Period may submit a De-list Bid. Such Resources may offer capacity in reconfiguration FCAs. If a capacity Resource's De-list Bid is accepted, that Resource may still participate in all other markets according to the rules of those markets.

- a. **Capacity to Replace De-lists.** Capacity needed to replace the capacity associated with an accepted De-list Bid above 1.2 times CONE shall not be purchased in the FCA. Instead, the capacity needed to replace the capacity associated with such De-list Bids shall be advanced into subsequent reconfiguration auctions. For prices from 0.8 times CONE to 1.2 times CONE, the quantity of replacement capacity for accepted De-list Bids purchased in the

FCA increase pro-rata. Any De-list Bids that were not purchased in the FCA shall be purchased in a reconfiguration auction.

- b. **Dynamic De-list Bids.** During any round of the descending clock FCA, any existing Resource may offer to de-list all or a portion of its capacity (including a partial De-list Bid) if the De-list Bid is offered at or below 0.8 times CONE. Such an offer is eligible to set the Capacity Clearing Price. If more De-List Bids are submitted at a price than are needed to clear the market, the ISO shall accept these De-List Bids pro-rata.

- 6. **Rationing Rule.** Project-specific bids from New Capacity and unit-specific bids from Existing Capacity and Existing Import Capacity must be taken or rejected in whole unless the bidder has specified otherwise. Existing Capacity may structure bids to partially de-list or export all or a portion of a Resource. Market clearing shall be based on minimizing total FCA costs for the first year of the Commitment Period. Import Bids are subject to rationing, subject to technical limits on minimum delivery.

- E. **Review by Market Monitor.** In reviewing bids from Existing Capacity that are subject to review as set forth in Part III.D above, the Market Monitor shall review that the proposed bid is consistent with the Resource's net risk-adjusted going-forward and opportunity costs, recognizing, among other things, infra-marginal rents, availability adjustments, and PER deductions. Provided, however, that Permanent De-list Bids below 1.25 times CONE shall be presumed competitive unless the Market Monitor determines that the bid is an attempt to manipulate the FCA. The details of this review shall be developed in the Market Rules.

The Market Monitor shall have the authority to review all offers below Summer Seasonal Claimed Capability to assure that they are not attempts to exercise physical withholding. The details of this review shall be developed in the Market Rules. The Market Monitor shall also have authority to review all Import Bids to assure that they are not attempts to manipulate the FCA, and the details of this review shall be developed in the Market Rules.

Where an entity submits both a New Capacity bid and a De-list Bid in the same FCA, the Market Monitor shall take appropriate steps to ensure that the unit de-listed in the FCA is not inappropriately substituted for the New Capacity Resource in subsequent reconfiguration actions.

New Capacity and New Import Bids below 0.75 times CONE are subject to Market Monitor review as described in Part III.H. below.

- F. Starting Price and Determination of CONE.** The first round of the descending clock FCA shall have a starting price of 2 x CONE, with CONE initially set at \$7.50/kW-month (therefore, the initial starting price will be \$15). Following the third FCA that has not been found to have Insufficient Competition or Inadequate Supply ("Successful FCA"), CONE will be based on the historical average capacity price using exponential smoothing with a parameter of 30 percent. That is,

$$\text{CONE in year } t+1 =$$

$$(70\% \text{ of CONE in year } t) + (30\% \text{ of Capacity Clearing Price in year } t),$$

with the exception that if the FCA failed in year t (either due to Insufficient Competition or Inadequate Supply) or if no new entry is required, or if Imports set the Capacity Clearing Price, or if the New Capacity bids in Part II.B.2.c set the Capacity Clearing Price (incremental additional capacity that is treated as new) then

$$\text{CONE in year } t+1 = \text{CONE in year } t.$$

Approach to be applied to determine CONE before three Successful FCAs:

Year 1 (First FCA): \$7.50/kW-month.

Years following the first Successful FCA but prior to the second Successful FCA: \$3.75/kW-month (50% of \$7.50) plus 50% of the Successful FCA Capacity Clearing Price.

Years following the second Successful FCA but prior to the third Successful FCA: \$1.88/kW-month (25% of \$7.50) plus 75% of the average of the two previous Successful FCA Capacity Clearing Prices.

G. Capacity Clearing Price.

1. A single run of the descending clock FCA shall establish the Capacity Clearing Price for each Capacity Zone based on the amount of capacity procured as described above. Permanent De-list Bids, Import Bids, Export Bids, and De-list Bids shall be eligible to set the Capacity Clearing Price subject to the limitations described above. Permanent De-list Bids and De-list Bids that are rejected for reliability reasons are not eligible to set the Capacity Clearing Price.
2. For prices below 0.8 times CONE, the full ICR, including capacity associated with all cleared Permanent De-list and De-list Bids, shall be

covered in the FCA. For prices between 1.25 times CONE and 1.5 times CONE, the quantity of Permanent De-lists covered in the FCA shall increase linearly. At 1.5 times CONE, no Permanent De-list Bids above that level shall be covered in the FCA; at 1.25 times CONE, all Permanent De-list Bids shall be covered. Similarly, for prices from 0.8 times CONE to 1.2 times CONE, the quantity of De-list Bids covered in the FCA shall increase linearly. At 1.2 times CONE, no De-list Bids shall be covered; at 0.8 times CONE, all De-list Bids above that level shall be covered.

3. In an import-constrained Capacity Zone, the Capacity Clearing Price shall always be at least as high as the Capacity Clearing Price in the Rest of Pool Capacity Zone.
4. For the lesser of five FCAs or three Successful FCAs: (a) if the Capacity Clearing Price is above 1.4 times CONE, Existing Capacity shall be paid 1.4 times CONE, and New Capacity shall be paid the Capacity Clearing Price; and (b) the Capacity Clearing Price shall not fall below 0.6 times CONE. At 0.6 times CONE, any excess supply shall be prorated to procure no more than ICR, as follows: the total payment to all listed Resources shall be equal to 0.6 times CONE times ICR. Payments to listed individual Resources shall be prorated based on the total number of bid MWs of listed units. Suppliers wishing instead to prorate their bid MWs of participation in the capacity market can do so by partially de-listing one or more Resources in their portfolio (or an equivalent mechanism to be developed in the Market Rules) after the need for proration is identified.

H. New Capacity and New Import Bids below 0.75 CONE.

1. New Capacity and New Import Bids below 0.75 times CONE must be submitted to the Market Monitor before the bid qualification deadline to be considered in the FCA.
2. If the Market Monitor finds that the New Capacity Bid below 0.75 times CONE is consistent with the long run average costs of that Resource (absent contractual considerations), or for New Import Bids below 0.75 times CONE, the opportunity cost or another reasonable economic measure, then the bid can set the Capacity Clearing Price. Otherwise, the New Capacity Bid or the New Import Bid (considered an "Out of Market Bid") shall be entered into the FCA pursuant to the Alternative Price Rule of Part III.I below.
3. If an RFP from the ISO covers any part of capacity costs, that capacity will be subject to the Alternative Price Rule.

- I. **Alternative Price Rule.** If system-wide or in any import-constrained Capacity Zone: (a) new capacity is needed in the relevant Commitment Period; (b) the FCA is: (i) a Successful FCA or (ii) the FCA has Insufficient Competition pursuant to Part III.L.2 below but not Inadequate Supply pursuant to Part III.L.1; and (c) at the Capacity Clearing Price the purchases from the Out of Market Bids exceeds the required new entry, then the Capacity Clearing Price for that Capacity Zone shall be the lesser of: (1) the price at which the last New Capacity Bid withdrew from the FCA (excluding Out of Market Bids and bids in export-constrained Capacity Zones) minus \$0.01, or (2) CONE; provided, however, that the price will be set to CONE in the event of Insufficient Competition if there are no withdrawn New Capacity Bids.

- J. **Carry-forward rule.** If as a result of the rationing rule in Part III.D.6, the ISO purchases megawatts through an FCA in excess of the ICR for an import-constrained zone, these extra megawatts shall create "carry-forward" accounts for the particular zones in which the corresponding physical assets are located.

 Going into an FCA, if there are positive carry-forward balances, these megawatts shall be treated as Out of Market Bids subject to the Alternative Price Rule; except that if no new capacity is required in the zone, the resulting price shall not be greater than the Capacity Clearing Price in the FCA in which this carry-forward capacity originally cleared. Consequently, this rule shall apply even if the subsequent year's FCA was not competitive, provided that the earlier FCA (which set the Capacity Clearing Price for these carry-forward megawatts) was competitive. The carry-forward provision can apply to any import-constrained zone.

- K. **Bids Rejected for Reliability Reasons.** A capacity Resource having a Permanent De-list Bid, De-list Bid, or Export Bid that is rejected for reliability reasons shall be paid a just and reasonable price (as determined by FERC) from the beginning of the Commitment Period and, for Permanent De-list Bids, for each subsequent Commitment Period (unless the reliability concern is addressed *before the start of the Commitment Period*) until it can be released to de-list. In such cases, the ISO shall attempt to procure replacement capacity at each FCA and annual reconfiguration auctions in order to release the capacity Resource to de-list. Payments to such Resources shall continue only until the reliability concern is addressed (through procurement of replacement capacity or other means, such as a transmission enhancement).

- L. **Inadequate Supply and Insufficient Competition.** In the case of either Inadequate Supply or Insufficient Competition, both of which are defined below, the FCA shall still be used to the extent possible; that is, the remedy for Inadequate Supply or Insufficient Competition shall be limited to the Capacity

Zones having Inadequate Supply or Insufficient Competition. In the event of FCA failure, the ISO shall try to identify the cause of the failure, and then take appropriate corrective action for future FCAs.

1. **Inadequate Supply.**

- a. **In a Capacity Zone.** A FCA will be considered to have Inadequate Supply in a Capacity Zone if at the Starting Price the amount of New Capacity (including imports) bid in the Capacity Zone is less than the amount of new capacity required in that Capacity Zone. In such an event, Existing Capacity in that Capacity Zone shall be paid 1.1 times CONE, New Capacity in that Capacity Zone shall be paid the Starting Price, and the deficiency shall be made up in subsequent reconfiguration auctions. Inadequate Supply in one or more Capacity Zones shall not affect the FCAs for Capacity Zones having adequate supply.
- b. **System-wide.** If the system-wide ICR cannot be satisfied at the Starting Price, then Existing Capacity shall be paid 1.1 times CONE, New Capacity will be paid the Starting Price, and the deficiency shall be made up in subsequent reconfiguration auctions. System-wide Inadequate Supply will not affect the FCAs for Capacity Zones having adequate supply, except that, in those Capacity Zones having adequate supply, New Capacity shall be paid the Capacity Clearing Price, and Existing Capacity will be paid the lower of (1) the Capacity Clearing Price, or (2) 1.1 times CONE. If there is inadequate capacity system-wide but sufficient competition in an export-constrained Capacity Zone, the ISO shall hold the FCA for the export-constrained Capacity Zone, and in that case the price in the Rest-of-Pool Capacity Zone shall be the higher of 1.1 times CONE or the price in the export-constrained Capacity Zone.

2. **Insufficient Competition.** The FCA shall be considered to have Insufficient Competition system-wide or in any Capacity Zone if the following two circumstances are both satisfied:

- a. the amount of Existing Capacity is less than the ICR or the Local Sourcing Requirement as applicable; and
- b. at the Starting Price, (1) less than 300 MW of New Capacity (to be reconsidered in the case of import-constrained Capacity Zones with a total requirement of less than 5000 MW) is bid; (2) the amount of New Capacity bid is more than the amount of new

capacity required but less than twice the amount of new capacity required; or (3) any Market Participant's New Capacity or New Import Capacity is pivotal unless such capacity is an Out of Market Bid. A Market Participant shall be considered pivotal if, at the Starting Price, some of that Market Participant's potential New Capacity is required to satisfy the ICR.

If the FCA has Insufficient Competition, New Capacity shall be paid the Capacity Clearing Price, and Existing Capacity shall be paid the lower of (1) the Capacity Clearing Price, or (2) 1.1 times CONE. For the purposes of determining whether there is Insufficient Competition, New Capacity shall not include Import Capacity.

M. Reconfiguration Auctions. The ISO shall conduct annual reconfiguration auctions and monthly reconfiguration auctions. Participation in reconfiguration auctions is voluntary.

1. **Product bought and sold.** Reconfiguration auctions allow: (i) the ISO to purchase capacity requirements deferred from the FCA because of Inadequate Supply or incomplete replacement of Permanent De-List or De-List Bids; (ii) the ISO to buy additional capacity if the ICR has increased; (iii) the ISO to release capacity if the ICR has decreased; and (iv) physical Resources to trade their capacity commitments. Capacity clearing in the reconfiguration auctions shall be entitled to receive capacity payments for the period sold in the reconfiguration auctions.
2. **Qualification.** Supply offers in the annual reconfiguration auctions must submit qualification materials through the same process as the FCA. Demand bids must be filed with the ISO prior to the reconfiguration auction, specifying a maximum price, quantity, and the capacity Resource seeking to de-list (in part or in full). Offers and bids shall not be subject to mitigation. However, the performance of the market shall be subject to the review of the Market Monitor.
3. **Rationing Rule.** All supply offers and demand bids shall be subject to rationing.
4. **ISO Demand Bids and Supply Offers.** The ISO may offer to buy capacity as described in Part III.M.1 above. If the ISO seeks to buy capacity under clause (i) of that Part and also sell for the same Commitment Period capacity under clause (iii), only the net quantity shall be satisfied or released in a reconfiguration auction. The ISO shall offer to buy or sell the full amount of any deficit or surplus, respectively, from the then-current forecast of ICR in every subsequent reconfiguration auction.

except as provided below. The ISO's demand bids shall be entered into the reconfiguration auction at a price of 2 times CONE. At prices above 0.75 times CONE, the ISO shall release all surplus capacity. Its sell offers shall follow a linear quantity rule that distributes the capacity for release between prices of 0.75 times CONE and 0.25 times CONE so that, if the price in a reconfiguration auction is below 0.25 times CONE, the ISO releases no surplus capacity.

5. **Locational Characteristics.** For any Commitment Period, capacity within any Capacity Zone that was in effect in the FCA, and for which there was price separation, shall be auctioned as distinct products in each subsequent reconfiguration auction for that period. Conversely, reconfiguration auctions shall not model any Capacity Zone that did not experience price separation in the primary FCA for that Commitment Period.
6. **Annual Auctions.** Annual reconfiguration auctions allow trading of whole-year commitments. Shortly after the FCA for year Y, the ISO shall conduct the annual reconfiguration auctions for year (Y-1), then for year (Y-2), and then for year (Y-3), which is the "prompt" year. Each annual reconfiguration auction shall be a static double auction to clear offers to buy and sell. (A static double auction is a uniform-price auction in which sellers submit offers and buyers submit bids simultaneously. The clearing price is determined by the balance of supply and demand. All sell offers that clear are paid the clearing price, and all buy bids that clear pay the clearing price.) If there are no supply offers or if there are no demand bids for a particular product, no reconfiguration auction is held for that product. If the quantity of unfilled Permanent De-list Bids and De-list Bids or the amount of unmet ICR is sufficiently large, the ISO may also accelerate the next annual reconfiguration auction by six months.
7. **Monthly and Seasonal Auctions.** Beginning with the first month of the first Commitment Period cleared under the FCA, the ISO shall conduct reconfiguration auctions prior to each month for commitments during that month. Like the annual reconfiguration auctions, the monthly reconfiguration auctions shall be static double auctions. If there are no supply offers or if there are no demand bids for a particular product, no monthly reconfiguration auction will be held for that product.

In addition to the monthly reconfiguration auctions described in the preceding paragraph, the ISO will conduct reconfiguration auctions prior to the months of June and October for a "seasonal strip" product to trade whole-season commitments. The seasonal strip reconfiguration auction

conducted prior to June will be for commitments covering the whole Summer Period of June through September, and the seasonal strip reconfiguration auction conducted prior to October will be for commitments covering the whole Winter Period of October through May. The seasonal strip reconfiguration auction for the Summer Period shall be conducted prior to the monthly reconfiguration auction for June, and the seasonal strip reconfiguration auction for the Winter Period shall be conducted prior to the monthly reconfiguration auction for October. Resources offering into monthly reconfiguration auctions may offer up to their capacity rating for that season or month, respectively.

8. Availability Penalties.

a. Availability penalties shall be calculated based on the Capacity Clearing Price in the FCA for the relevant Commitment Period, except for any Resource under a multi-year Commitment Period, in which case the penalties for such Resource shall be set according to multi-year Capacity Clearing Price applicable to the Resource for the particular Commitment Period.

b. Penalty Caps.

i. **Obligations covered bilaterally.** If a capacity Resource owner covers its capacity obligation for part of the year through a bilateral transaction, the availability penalty caps described in Part V.C.2.b and V.C.2.c shall apply to the sequence of Resources as though they were a single resource. It shall be the responsibility of the contracting parties to allocate the benefit of these caps among themselves.

ii. **Obligations covered through annual reconfiguration auctions.** If a capacity Resource owner sells its capacity obligation in an annual reconfiguration auction, the purchaser is subject to the same availability penalties and penalty caps that apply to a capacity Resource sold in the FCA for the relevant Commitment Period.

iii. **Obligations covered through Capacity seasonal or monthly reconfiguration auctions.** A capacity Resource that acquires a seasonal capacity obligation through a seasonal reconfiguration auction, or a one-month capacity obligation through a monthly reconfiguration auction cannot be charged availability penalties in excess of 2.5

times its monthly FCA Payment for any month in that Commitment Period, consistent with Part V.C.2.b. No capacity Resource on the system can be charged availability penalties in excess of its annual FCA Payment for that Commitment Period. If a capacity Resource is delisted, in part or in full, for part of the year, the annual cap on availability penalties is not prorated, except to the extent that the capacity obligation was transferred bilaterally as described in subpart (i) above.

- N. **Interaction with Locational Forward Reserves Markets.** The Locational Forward Reserves Market ("LFRM") jointly filed by the ISO and NEPOOL in Docket No. ER06-613-000 shall not be changed by the Settlement Agreement. Parties retain their rights to address LFRM in proceedings before the FERC and retain their rights to address the interaction between the LFRM and the Forward Capacity Market in the stakeholder process that provides for consultation with state utility regulatory agencies and in proceedings before the FERC. The Parties agree to work to identify in the appropriate Market Rules how the LFRM and capacity markets will function together efficiently in the long run.
- O. **Self-Supply Option.** As provided in Part II.F above, the Forward Capacity Market shall include a "self supply option," pursuant to which a LSE may designate as its FCA Resources Self-Supplied Capacity Resources that it owns or to which it has contractual rights. The amount of MWs of Resources so designated for a Capacity Zone may not exceed the LSE's projected ICR obligation for the applicable Commitment Period in that Capacity Zone.
- P. **Bilateral Contracting.** Bilateral contracts shall be allowed up to the applicable Seasonal Claimed Capability of the Resource for that applicable month. Any Resource accepting a capacity obligation pursuant to a bilateral contract shall be subject to the qualification requirements of Existing or New Capacity, as applicable.

IV. **Agreements Regarding Rights and Obligations.**

- A. **Listed Capacity.** Listed Capacity shall have the following rights and obligations, effective the first Commitment Period of the Forward Capacity Market.
 - 1. The listed portions of Resources must offer into both the Day-Ahead and Real-Time Energy Markets whenever available. The current Day-Ahead Energy Market obligations of Intermittent and demand Resources are not changed by this Settlement Agreement.
 - 2. Day-Ahead Energy Market offers from capacity Resources must either:

- a. have a sum of start time plus minimum run time plus minimum down time that is less than or equal to 72 hours; or,
 - b. for Resources that due to physical design limits cannot meet the offer requirement in subpart IV.A.2.a., be bid in at zero in Day-Ahead or Self Scheduled on.
 - c. Capacity Resources that meet the offer requirement in subpart IV.A.2.a. may also Self Schedule.
- 3. For each day, Day Ahead and Real Time offers for the listed portion of a Resource must reflect the then-known unit-specific operating characteristics (taking into account, among other things, the physical design characteristics of the unit) consistent with good utility practice. Capacity Resources must re-declare to the ISO any changes to the offer parameters that occur in real time to reflect the known capability of the Resource.
- 4. Appendix B of Market Rule 1 will be modified as necessary and consistent with Part VIII of this Settlement Agreement to apply to listed portions of Resources during the Transition Period. Following the Transition Period, Appendix B will be revised to reflect the following economic penalties, which shall be in addition to any availability penalties pursuant to Part V.C.2 resulting from a failure to perform during a Shortage Event:
 - a. Intentional violations of Part IV.A.3 shall be subject to the following penalty structure:
 - i. For the first violation: warning.
 - ii. For the second violation: up to daily FCA Payment (\$\$/kW-day) for affected (kW), capped at \$150,000.
 - iii. For the third violation: up to 2 times daily FCA Payment (\$\$/kW-day) for affected (kW), capped at \$300,000.
 - iv. For the fourth violation: up to 4 times daily FCA Payment (\$\$/kW-day) for affected (kW), capped at \$600,000.
 - v. For any violations after the fourth violation: all remedies available under the FPA, without limitation.
 - b. For purposes of establishing penalties pursuant to Part IV.A.4.a above, violations must occur in a 90 day period in order to be

cumulative. In order to constitute a violation following a warning or prior violation, the violations must (i) be similar in nature and relate to either the same unit or a unit with similar operating characteristics that is owned directly or indirectly by the same entity and has its bid parameters submitted by the same entity, and is alleged to have committed the same violation of Part IV.A.3; and (ii) the entity subject to potential penalty must have had an opportunity to confer with the ISO following receipt of the notice of the warning or prior violation as described in Part IV.A.4.d below.

- c. If multiple units with similar operating characteristics that are owned directly or indirectly by the same entity and have their bid parameters submitted by the same entity are alleged to have committed the same violation of Part IV.A.3 during the same bidding days, the violation shall be counted as a single violation for the similar units.
- d. Assessment of Penalties for violations shall be subject to the following general due process rights:
 - i. Timely Notice. The ISO must give a warning or notice within 10 days of the observed behavior (in order to ensure that the generator has relevant information regarding the rationale behind the bid).
 - ii. Opportunity to Confer with the ISO. A generator must be given the opportunity to respond within 3 business days of the warning/notice with its rationale supporting its bid parameter(s), including relevant documentation, if any. If the ISO concludes that the observed behavior was not an intentional failure to bid in accordance with Section IV.A.3, the warning or notice will not count for purposes of applying a penalty.
 - iii. Imposition of Penalty. A Resource shall have the ability within 5 business days after conferring with the ISO pursuant to Part IV.A.4.d.ii to petition the FERC Office of Market Oversight and Investigations ("OMOI") to address any disagreements with the ISO as to whether the particular behavior constituted an intentional failure to bid in accordance with Part IV.A.3. If OMOI concludes that the behavior that is the subject of the warning is not an intentional failure to bid in accordance with Section

IV.A.3, the warning will not count for purposes of applying a penalty. The issuance of the warning by the ISO and the petition to the OMOI shall be conducted on a confidential basis without notice to any other party; provided however, that the issuance of a warning that is not petitioned to the OMOI may be made public by the ISO. Any penalties imposed pursuant to this section shall be filed publicly at FERC and shall be imposed only by FERC order.

5. Economic outages are not permitted for capacity Resources. If due to extraordinary fuel prices, a Market Participant cannot submit a bid which would recover its full operational cost, it may then submit a Supply Offer in the Day-Ahead Energy Market or in the Real Time Energy Market at the Offer Cap (or highest level allowed by the software) and contemporaneously advise the ISO that the Supply Offer would have been equal to or greater than the Offer Cap but for the Supply Offer Cap specified in Market Rule 1, Section III.1.10.1A(d)(viii) (the "Offer Cap") and provide the ISO with a statement of what the Supply Offer would have been but for the Offer Cap (the "Offer"). If the capacity Resource is subsequently dispatched for the period covered by the Offer, the Market Participant shall be paid its Offer for each MWh of Energy produced from the applicable generating Resource through the payment of the Locational Marginal Price and, appropriate Net Commitment Period Compensation ("NCPC") Credits, provided that such payment shall not exceed the capacity Resource's fuel costs, including commodity cost, transportation applicable to transporting cost related to the generation in the bid, and imbalance charges or other penalties applicable to such generation. NCPC Credits and Charges will be allocated in accordance with Appendix F of Market Rule 1.
6. A Resource that transfers its capacity market obligations to another Resource either through a reconfiguration auction or a bilateral contract pursuant to Part III.P and as applicable subject to Part III.M.8 will be relieved of its capacity Resource obligations and shall be de-listed pursuant to the de-listing process to be developed in the Market Rules and the contracting entity will assume those obligations.

B. De-listed Capacity. De-listed Capacity shall have the following rights and obligations, effective the first Commitment Period of the Forward Capacity Market.

1. Rules with respect to De-listed units, including Permanent De-listed units and Export Capacity units, shall apply only with respect to the De-listed

portion of a unit, and obligations with respect to listed portions shall be unaffected.

2. All or a portion of a capacity Resource that does not clear in a FCA, and any portion of such Resource for which a Permanent De-list Bid, De-list Bid, or Export Capacity (as an accepted Export Bid or bilaterally sold pursuant to Part III.P) has been accepted, was de-listed pursuant to Part III.D, or has transferred its obligation pursuant to Part IV.A.6 is not otherwise committed to provide capacity pursuant to a bilateral contract or reconfiguration auction ("De-listed Capacity"), is not required to offer the De-listed Capacity into the Day-Ahead or Real-Time Energy Market or honor the ISO's requests to reschedule maintenance during the Commitment Period for that FCA.
3. De-listed Capacity may be offered into the Day-Ahead Energy Market and, if accepted, shall be subject to the same rules as all other Resources in that Market (including the obligation to follow the ISO dispatch instructions). Such De-listed Capacity may be self-scheduled for portions of units not accepted into the Day-Ahead Energy Market.
4. De-listed Capacity not offered into the Day-Ahead Energy Market must Self-Schedule in order to participate in the Real-Time Energy Market. Any De-listed Capacity, including any portion of a de-listed unit, that is offered into the Day-Ahead Energy Market but accepted neither in whole nor in part must also Self-Schedule to participate in the Real-Time Energy Market. The ISO may request that such a Resource provide Energy, but the Resource shall not be obligated to come on line and shall not suffer any performance or availability penalties if it does not come on line.

C. **Self-Supplied FCA Resource.** A Self-Supplied FCA Resource shall be subject to the same "Rights and Obligations" as any other capacity Resource that is accepted in the FCA.

V. **Agreements Regarding Payments and Charges.**

A. **Capacity Clearing Prices.** Capacity Clearing Prices shall be determined for each Capacity Zone in the FCA. Each capacity Resource clearing in the FCA, or otherwise covered by a multi-year commitment, but not a Self-Supplied FCA Resource, shall be entitled to monthly payments based on the product of its MWs of capacity cleared in the relevant FCA and the Capacity Clearing Price in the appropriate location in the New England Control Area (the "FCA Payment"); provided that FCA Payments to New Capacity shall be limited to the capability demonstrated as contemplated by either Part III.D.1 or Part III.D.4.a, as necessary. The FCA Payment shall be decreased for PER pursuant to Part V.B.

below and adjusted for availability penalties or credits pursuant to Part V.C. below.

1. **Capacity with a one-year Commitment Period.** Capacity with a one-year Commitment Period (that is, Existing Capacity, Import Capacity and New Capacity electing a one-year Commitment Period) shall receive monthly capacity payments based on the FCA Capacity Clearing Price for the one-year Commitment Period.
2. **Capacity with a multi-year Commitment Period.** New Capacity with a multi-year Commitment Period (that is, New Capacity electing a Commitment Period of anywhere from two to five years, in one-year increments) shall receive monthly capacity payments based on the FCA Capacity Clearing Price that is associated with the first year of the Commitment Period for each of the years of its Commitment Period. After the first year of the Commitment Period, the price paid to that New Capacity shall be adjusted to account for inflation using an agreed-upon index to be determined in the Market Rules. (In other words, the FCA Capacity Clearing Price that applies in the first year of the Commitment Period for that New Capacity shall also apply, adjusted for inflation, in each year of the remainder of the multi-year Commitment Period.)
3. **Capacity in the Reconfiguration Auction.** Capacity clearing in a reconfiguration auction shall receive monthly capacity payments based on the reconfiguration auction clearing price for the relevant portion of the Commitment Period.

B. Peak Energy Rents ("PER"). Payments to capacity Resources shall be decreased by PER as provided in this Section V.B.

1. **Hourly PER Calculations.**
 - a. For hours with a positive difference between the energy price and a "strike price" equal to the deemed incremental cost of a marginal "proxy unit", the ISO shall compute a PER for each hour ("Hourly PER") equal to this positive difference in accordance with the following formula, which includes scaling adjustments as described in Part V.B.1.c and V.B.1.d.iv below:

$$\text{Hourly PER} = [(\text{LMP} - \text{strike price}) * (\text{scaling factor "50/50"})] * [\text{the Availability Factor (0.95)}]$$

This Hourly PER shall be summed for the month to determine the total PER for the month ("Monthly PER"). The ISO shall then calculate the average Monthly PER earned by the proxy unit for the most recent 12 months. This Monthly PER shall be deducted from the payment due to the listed portion of each capacity Resource in the month.

- b. The PER calculation shall utilize hourly integrated Real-Time LMPs.
 - i. If there is zonal price separation in the FCA, PER shall be computed based on Real-Time LMPs for each Capacity Zone (using the Real-Time Hub price for the Rest-of-Pool Zone).
 - ii. If there is no price separation in the FCA, PER shall be computed based on the Real-Time Hub price.
- c. The PER calculation shall be scaled hourly based on the ratio of actual hourly integrated system load and the "50/50" predicted peak system load used in establishing ICR, capped at an hourly ratio of 1.0.
- d. PER "proxy unit" characteristics shall be as follows:
 - i. The PER "proxy unit" shall be indexed to the marginal fuel, with additional detail to define how to determine the marginal fuel to be reflected in a Market Rule;
 - ii. The PER "proxy unit" shall be assumed to have no start-up, ramp rate or minimum run time constraints;
 - iii. For at least the first Commitment Period, the PER "proxy unit" shall be deemed to have a 22,000 BTU/kWh heat rate. This assumption shall be periodically reviewed after the first Commitment Period by the ISO to ensure that the heat rate continues to reflect a level slightly higher than the marginal generating unit in the region that would be dispatched as the system enters a scarcity condition. Any changes to the heat rate of the PER "proxy unit" shall be considered in the stakeholder process in consultation with the state utility regulatory agencies, shall be filed pursuant to Section 205 of that FPA, and shall be applied prospectively only to future FCAs.

- iv. The PER "proxy unit" availability is deemed to be 95%.
The PER shall be scaled by this availability factor.

2. Monthly PER Application.

- a. FCA Payment shall be reduced by a 12-month rolling average PER adjustment calculated prior to the prompt month.
 - b. The rolling 12-month average PER calculations for Capacity Zones that become either constrained or unconstrained (import or export), shall include a locationally determined PER in each month that the constraint binds in the FCA.
 - c. PER tracks energy revenues and therefore shall be deducted from capacity payments independently of availability adjustments.
 - d. FCA Payment minus PER cannot be negative for any month.
- 3. Self-Supplied FCA Resources.** Self-Supplied FCA Resources shall not pay a PER adjustment. LSEs satisfying their ICR obligations by a Self-Supplied FCA Resource shall not receive a credit for any PER payment for their ICR obligations so satisfied.

C. Availability Metric: Modified Shortage Hours. Payments to capacity Resources shall be adjusted to reflect the performance of those Resources during Shortage Events as provided in this Part V.C.

1. Definition of "Shortage Events":

- a. System-wide Reserve Constraint Penalty Factors ("RCPFs") shall trigger a Shortage Event.
- b. A Shortage Event may also be triggered solely in an import-constrained region if there is price separation for the applicable Capacity Zone in the FCA and an OP4 Action 6, OP4 Action 12, OP4 Action 13, or OP7 event in that Capacity Zone has been declared solely in the import-constrained zone, where such declaration is based on adequacy (versus security).
- c. An export-constrained region shall be exempt from a Shortage Event if there is price separation for the applicable Capacity Zone in the FCA and an OP4 Action 6, OP4 Action 11, OP4 Action 12, OP4 Action 13, or OP7 event has been declared for the Rest-of-

Pool Capacity Zone but not for that export-constrained Capacity Zone.

- d. A discrete Shortage Event is defined as any contiguous period of RCPF activation with a minimum duration of 30 minutes, or, in an import or export-constrained region, an OP4 action or OP7 event identified in Parts V.C.1.b and V.C.1.c above with a minimum duration of 30 minutes. Such activations, actions and events must be separated by at least 2.5 hours to be considered discrete Shortage Events. There may be a maximum of two Shortage Events per day.

2. **Availability Penalties.**

- a. For Resources that are unavailable during a Shortage Event:
 - i. Penalties shall be determined and assessed on a Resource-specific basis.
 - ii. The penalty per Resource for each event shall be 5% of its FCA Payment for that year, subject to sub-Parts V.C.2.a.iii. through V.C.2.a.v. below.
 - iii. The penalty for the portion of the Shortage Event during which the Resource was unavailable shall be prorated based on the number of hours (or fractions of hours) that the Resource was available in such Event.
 - iv. The penalty shall be further prorated based on the hourly ratio of available MW, as determined below, to the Summer Seasonal Claimed Capability of the unit (or amount sold in the FCA if less).
 - v. For discrete Shortage Events that exceed five hours, the penalty shall be increased by 1% per hour.
 - vi. In no case shall the total penalties for all Shortage Events in an operating day exceed 10% of the Resources' FCA Payment for that year.
- b. The total of a Resource's penalties arising from unavailability during a calendar month cannot exceed two and one-half times the total FCA Payment for that calendar month. The total of a Resource's penalties arising from unavailability due to a single

outage of four days or less but spanning two calendar months cannot exceed two and one-half times the average of the total FCA payments for both months.

- c. The total of a Resource's annual penalties cannot exceed its total FCA Payment less PER adjustments for that year.

3. **Availability Credits.** On a monthly basis, penalties received from unavailable Resources shall be redistributed to listed Resources that were available in the respective hour(s) using the following distribution method: For each Shortage Event in a month, the penalties assessed for that event will be credited to those Resources that were available, in whole or in part, during that event, pro-rata by hourly available MW in the relevant Capacity Zone(s).

4. **Definition of "Available."** A Resource shall be deemed available: (i) if it is on line and following the ISO dispatch instructions, to the extent of its available EcoMax; or (ii) if it has a notification plus start-up time of 30 minutes or less, to the extent of its available EcoMax; or (iii) if it meets the requirements of any of the following sub-parts V.C.4.a. through V.C.4.d:

- a. A Resource with notification plus start-up times less than or equal to 12 hours that was competitively bid but was not committed by the ISO because it was not needed to satisfy the market's anticipated energy and reserve needs and is consequently unavailable within 30 minutes, provided the Resource shall not be considered available if it fails to come on line in accordance with its verified unit characteristics when called by the ISO either in its Resource Adequacy Assessment process or otherwise prior to or during the delivery day. For the duration of the first five annual FCA Commitment Periods, existing Resources with notification plus start-up times greater than 12 hours, as of the date of the Settlement Agreement, will be subject to a notification and start-up time criteria of 16 hours rather than 12 hours (subject to Part IV.A.3. above regarding offer parameters). Thereafter, all existing and new Resources will be subject to the 12-hour criterion.

- b. A Resource not committed due to a transmission outage, or derate in New England other than an outage or derate of such transmission equipment (i) controlled by the internal Resource; or (ii) constituting a radial lead to a internal Resource (other than radial leads to Wyman 4 and Stony Brook). In addition, a Resource in a Capacity Zone that was export-constrained in the

FCA shall not be subject to a Shortage Event in the circumstances described in Part V.C.1.c. Unless otherwise provided for in a separate settlement provision, Maine Independence Station shall not be deemed to be unavailable for capacity purposes when derated or not committed because of a constraint on the Orrington South, Surowiec South or Maine – New Hampshire interfaces.

- c. Import Capacity that has been properly offered in the Day-Ahead Energy Market that cannot make Real-Time deliveries because the relevant transmission element is fully loaded in Real Time;
 - d. A Resource that is on maintenance approved in the ISO's annual maintenance scheduling process, provided that:
 - i. The Resource has not scheduled such maintenance in December through January or June through mid-September, unless the ISO requests the Resource to schedule its annual maintenance during one of those periods; and
 - ii. The Resource has not exceeded the maximum allowable days of annual maintenance as established by the ISO standards, which standards shall be subject to the stakeholder process in consultation with state utility regulatory agencies and consistent with good utility practice.
5. If a capacity Resource temporarily does not meet the requirements of either subparts IV.A.2.a. or IV.A.2.b. above, the Resource must declare itself to be unavailable.
 6. A capacity supplier can supplement the shortage hour availability performance of its unavailable "listed" Resource in a Shortage Event by purchase of a Resource that is not listed, provided that the substitute Resource accepts all of the associated capacity obligations of a "listed" Resource.
 7. **Poorly Performing Units.** The availability score of a Resource in a given year shall be calculated as the number of hours of availability during Shortage Events divided by the total number of Shortage Event hours during a year. In the event that there are no Shortage Event hours during a year, the availability score is 100 percent. Prior to qualifying a Resource to participate in the FCA, the ISO shall determine whether a Resource meets the following two criteria: (a) if, in any four year period, a

Resource received three availability scores of less than or equal to 40 percent; and (b) the Resource has failed to be available during at least ten Shortage Events during that same four-year period. If both of these criteria are met, the Resource shall be considered a Poorly Performing Unit and shall not be eligible to participate in the FCA or be designated as a capacity Resource until (as a non-capacity Resource) it either achieves an availability score of 60 percent or higher in three consecutive years or has demonstrated to the satisfaction of the ISO that the source of the inadequate availability score has been remedied. For the purposes of determining whether a Resource is a poorly performing unit, its availability score while it is de-listed shall not be considered. For the purposes of returning from poorly performing status, the ISO, at the request of the Resource owner, may consider performance while de-listed. The ability to request consideration of performance while de-listed in support of returning from poor performing status shall not be construed as to imply an ability to choose non-consecutive years for evaluation.

8. **Intermittent Resources and Demand Resources.** Intermittent Resources and demand Resources shall be exempt from the availability penalties and credits of this Part V.C.
9. **Self-Supplied FCA Resources.** Self-Supplied FCA Resources are subject to the same availability penalties and credits as other Resources participating in the FCA. If a Self-Supplied FCA Resource is unavailable during a Shortage Event, the LSE designating that Resource shall be responsible for paying the associated availability penalty based upon the Capacity Clearing Price for that Commitment Period. Self-Supplied FCA Resources shall be eligible to receive their pro-rata share of availability penalties paid by other capacity Resources.

VI. Agreements Regarding External Resources.

Market Rules, operating procedures and manuals shall be changed to allow External Resources to participate in the Forward Capacity Market and Transition Period on a basis comparable to internal generation Resources. Among the changes that are required are that the timing for Real Time contract submittals be modified to allow them to be made after the Day Ahead Energy Market closes and as soon as one hour before an operating hour in order to allow for the purchase of required transmission.

- VII. Agreements Regarding Gas Availability.** For the winter season of the first Commitment Period under the FCA and for each subsequent winter season, the following provisions shall apply:

- A. **Adjustment of Deadlines.** The normal times for the Day-Ahead Energy Market bid and offer deadlines, the posting of Day-Ahead Energy Market results and the initial Resource Adequacy Assessment ("RAA") process shall be rolled back to earlier time periods during the peak winter months of December, January and February such that the results of the Day-Ahead Energy Market and initial RAA are available by a target completion time of 10:30 a.m. of the day prior to the electric Operating Day. The Day-Ahead Energy Market will normally be cleared and posted within four hours of the deadline for submitting Day-Ahead Energy Market bids and offers. The initial RAA will be run after the posting of the Day-Ahead Energy Market results with a scheduled completion of at 10:30 a.m. The start of the Re-offer period shall be open immediately after the initial RAA run.
- B. **Procurement of Supplement Reserves and Payments.** For days that the ISO forecasts a Cold Weather Warning or Cold Weather Event (as currently described in Appendix H of Market Rule 1) for the next Operating Day, the ISO shall include in the initial RAA process the procurement of an additional 1000 MW per hour of Supplemental Reserves for peak load periods of the day from gas fired resources that are required to rely exclusively on gas for their operations that Operating Day and not already participating in the Forward Reserve Market. At the completion of the initial RAA, the ISO shall notify Resources of the expected energy schedule incremental to the Day-Ahead Energy Market results, if any, plus the applicable reserve MWHs, for the respective unit. For such Cold Weather operating conditions, the outcome of this initial RAA shall be financially binding for the incremental gas fired generation (i.e., gas-fired generation beyond that gas-fired generation scheduled in the Day-Ahead Energy Market) scheduled in the initial RAA. In addition, the MWHs of Supplemental Reserves scheduled from gas-fired generation scheduled for these Cold Weather Warning periods in accordance with the understandings in this part will be compensated pursuant to the formula below (or similar method) for resale of gas reserved, purchased and nominated for such Supplemental Reserves. The natural gas volume (Scheduled Volume) obtained by Resources eligible for such compensation shall be based upon the particulars of the noticed schedule: (the total hours of requested service, total MWs per hour and the unit's applicable heat rate). If the ISO does not dispatch energy from the scheduled Supplemental Reserves to the full extent committed pursuant to this understanding, then those generators will be compensated for the portion of the Supplemental Reserves not dispatched for energy in accordance with the following formula:

(Daily Gas Index for Gas Day scheduled flow date – Daily Gas Index for first Gas Day for which flow orders have been removed to allow the sale of the gas that was held for reserve service) x (Undispatched reserved gas volume).

The Daily Gas Index applicable to each gas-fired Resource shall be based on the index used by the Market Monitor for establishing Reference Levels for that Resource under Section III.A.5.6.1(b)(i) of Appendix A of Market Rule 1. The ISO shall establish a methodology for determining applicable prices from the appropriate index that are reasonably designed to reflect the difference between (1) prices on the scheduled flow date and (2) prices for the resale of gas scheduled to meet that Resource's binding obligations but not burned to generate electricity at the location of the affected Resource during Cold Weather Warnings and Cold Weather Events. The ISO shall communicate that methodology for determining prices from the applicable index to the Governance Participants for consideration pursuant to the stakeholder process for considering Market Rules and changes, and shall file the methodology with FERC pursuant to Section 205 of the FPA.

- C. **Confirmations.** For days that the ISO forecasts Cold Weather Warnings and Cold Weather Events, sufficiently in advance of pipeline gas nominating deadlines, all gas-fired Resources shall confirm to the ISO that they will nominate sufficient fuel to be able to deliver the energy and Supplemental Reserves scheduled in the Day-Ahead Energy Market and initial RAA results respectively. Following the Initial RAA but no later than 6:00 p.m. of the day preceding the electric Operating Day, each gas-fired Resource shall provide to the ISO confirmation and evidence of gas volume nomination of sufficient fuel to be able to deliver the energy scheduled for such Resource in the Day-Ahead Energy Market and the Supplemental Reserves that were identified for that Resource in the initial RAA.

VIII. Agreements Regarding Transition Period.

- A. The current UCAP products shall be retained for the period commencing on December 1, 2006 and ending on May 30, 2010 (the "Transition Period") as provided for in Part VIII.I. Payments will be made to UCAP entitlement holders, and made by UCAP obligation holders including wholesale standard offer suppliers in Rhode Island as under the current Market Rules and tariffs; it being understood that the agreement of wholesale standard offer suppliers in Rhode Island to make UCAP payments is contingent upon the agreement of the state of Rhode Island utility regulatory authorities to support the settlement.
- B. All listed ICAP Resources shall receive the following fixed payments, based on their seasonal UCAP ratings:

December 1, 2006 to May 31, 2007	\$3.05/kW-month
June 1, 2007 to May 31, 2008	\$3.05/kW-month
June 1, 2008 to May 31, 2009	\$3.75/kW-month
June 1, 2009 to May 31, 2010	\$4.10/kW-month

These payments are fixed and shall not be adjusted for changes in UCAP quantity.

- C. There shall be no PER adjustments to any of the above payments.
- D. Availability shall be measured by a weighted EFORD approach, as follows:

Outage Period	Weighting Factor
Off-Peak Hour	0.0
On-Peak Hour	1.0
Seasonal Peak Hour	20.0
Shortage Hour	40.0

Outage Period definitions:

On-Peak	Hours-ending 8:00 a.m. through 11:00 p.m. on all non-NERC holiday weekdays.
Off-Peak	All hours that are not On-Peak hours.
Seasonal Peak	The 200 hours pertaining to the highest 100 hourly system loads during the Summer Period (for this purpose, June through September) and the highest 100 hourly system loads during the Winter Period (for this purpose, October through May).
Shortage Hour	Periods of system-wide OP4, Action 6 or 11 or OP7 implementation.

Weighting factor shall not be additive (i.e., a Shortage Hour does not have a weighting factor equal to 61). A Resource's availability factor for purposes of UCAP ratings (i.e., UCAP settlement credit) in settlement shall be a rolling average of the unit's seasonal weighted EFORD, with seasons as defined in the Seasonal Peak provision above. In months in which the Resource is de-listed, the unweighted EFORD shall apply. Weighted EFORD shall be phased-in over the first two seasons of the Transition Period. For the first six calendar months of the Transition Period, corresponding to the remaining portion of the 2006/2007 winter season, the ISO will gather the data necessary to calculate weighted EFORD for this season. However, for payment purposes during this time, the availability score will be based on twelve-month rolling unweighted EFORD.

During the 2007 summer season, the availability score will be calculated as 50 percent weighted EFORD from the 2006/2007 Winter Period (i.e., October 2006 through May 2007) and 50 percent unweighted EFORD, calculated using six months of data prior to transition (i.e., April 2006 through September 2006). At the conclusion of the 2007 summer season, a weighted EFORD score shall be calculated for that season, and that score shall replace the unweighted EFORD score in the calculation above. For the remainder of the Transition Period, the weighted EFORD score of each Resource shall be updated coincident with each new winter and summer season, using the process described above.

The method for converting the ICRs in Section 1.4 of Manual 20 shall continue to be based on the EFORD determined under the current equal weighting of all hours.

If additional measures need to be taken by the ISO to protect reliability during the Transition Period, the ISO retains its right to make filings pursuant to Section 205 of the FPA as appropriate, subject to stakeholder process.

- E. Unless otherwise agreed in a FERC-approved settlement, transition payments shall be netted against RMR payments. Transition payments shall be considered capacity payments for purposes of netting in the LFRM markets.
- F. For the purpose of any RMR agreements that have provisions that terminate such RMR agreements upon the implementation or effectiveness of a locational ICAP mechanism, the Transition Period shall not be considered to be the implementation or effectiveness of a locational ICAP mechanism and the beginning of the first Commitment Period of the FCA shall be considered to be the implementation or effectiveness of a locational ICAP mechanism. Notwithstanding the foregoing, and absent an FERC-approved settlement, nothing herein prejudices the rights of any party to challenge, seek to terminate or support an RMR agreement on any other grounds or restrict any party's rights to seek, agree to or oppose any RMR modifications.
- G. Suppliers shall be permitted to partially delist or export their units.
- H. Commitment periods shall be seasonal, summer (May - October) and winter (November - April). For 2006, the Winter Commitment Period shall begin on December 1, 2006. Imports qualify with a minimum 2-month commitment (consecutive months in the same season). Exports do not receive payment.
- I. **2010/2011 Commitment Period Special Pricing Rule.** If the ISO conducts the first FCA in the first quarter of 2008 for the Commitment Period beginning June 1, 2010, and the FCA fails either the Inadequate Supply or Insufficient Competition test, then any New Capacity Resources selected in the FCA shall be

paid the FCA starting price or FCA Capacity Clearing Price, as appropriate, in the 2010/2011 Commitment Period and Existing Capacity shall be paid the average of all Successful FCAs held prior to the 2010/2011 Commitment Period. If subsequent FCAs also fail, or if the 2010/2011 FCA cannot be held, all existing listed ICAP Resources in the 2010/2011 Commitment Period shall be paid \$4.70 per kW-month in accordance with the provisions of this Part VIII.

J. Intermittent and Demand Resources.

1. **Intermittent Resources.** During the Transition Period, Intermittent Resources shall continue to receive the treatment for determining capacity and availability in effect under the current Market Rules, Tariffs and Manuals.
2. **Demand Resources.**
 - a. Real Time Demand Response during the Transition Period shall remain as qualifying capacity Resources subject to Market Rule 1 Appendix E and the Load Response Manual. As such, the role of demand response resources in the market will continue to evolve as Market Rule 1 Appendix E and the Load Response Manual are revised.
 - b. During the Transition Period, new (as of the Effective Date) demand side management installations (both energy efficiency and demand response, other than Real Time Demand Response) undertaken as part of merchant, utility, or state sponsored programs will be considered as qualified capacity and subject to the ISO review of the verification process. Details concerning how these programs qualify as capacity Resources will be reflected in the Market Rules.

- K. Phase I/II HQ Interconnection.** During the Transition Period, the total transfer limit of the HQ Phase I/II interconnection with Hydro-Quebec shall be fixed at 1800 MW for UCAP purposes, as set forth below. Except as set forth below in this subsection, the total MWs of HQICCs shall be fixed at 1200 MW March through November and zero MW December through February, shall receive payment in the non-zero months under Part VIII.B and I, and otherwise continue to receive the treatment for determining capacity and availability in effect under the Market Rules (Market Rule 1 Section III 8.3.2 (a) (v)), Tariffs and Manuals as of March 6, 2006. The remaining 600 MW of transmission may be used for UCAP over the Phase I/II interconnection by any supplier that arranges for transmission over the interconnection without reductions in the HQICCs. UCAP above 600 MW may be transmitted only in those months when the HQICCs are

1,200 MW and will result in reductions in HQICCs as provided for under current procedures. Only the remaining HQICCs will receive UCAP payments under Part VIII.B and I. UCAP delivered over the Phase I/II facilities shall receive payment under this Part VIII.B and I. Non-HQICC UCAP delivered over the Phase I/II facilities shall continue to receive the treatment for determining capacity and availability in effect under the Market Rules as they may be modified pursuant to Part VI of this agreement.

IX. Consideration of Expedited Treatment for Challenges to Certain ISO Determinations that Must Be Final Prior to the FCA. Not later than 90 calendar days prior to the conduct of each FCA, the ISO shall make an informational filing at the FERC in which the ISO shall identify the *determinations listed below in Part IX.A through C and provide supporting documentation* for each such determination. Interested entities will have 15 days thereafter to file comments on or challenges to the determinations in that informational filing. Unless the FERC issues an order to the contrary within 75 calendar days following that informational filing, such determinations contained in the filing shall be used by the ISO in the next FCA, and the Capacity Clearing Price derived through that FCA shall be subject to the finality provisions of Section 4.C. If the FERC does issue an order to the contrary, absent further direction from the FERC, the ISO shall use the revised determinations reflected in that order in the ensuing FCA, which shall be conducted no earlier than 15 days following that order. Once the ISO has used such a revised determination in the FCA in accordance with the provisions of this Part IX, the Capacity Clearing Price derived through the applicable FCA shall be subject to the finality provisions of Section 4.C.

- A.** The ISO's determinations pursuant to Part III.A.
- B.** Resources that satisfy the qualifications in this Settlement Agreement and the Market Rules that address the terms of this Settlement Agreement to participate in an FCA or reconfiguration auction specifically.
- C.** Market Monitor conclusions concerning acceptability of Bids in any FCA.

ATTACHMENT 1-A

ATTACHMENT A SETTLEMENT AGREEMENT RESOLVING ALL ISSUES

Definitions. This Attachment A consolidates, references and summarizes capitalized terms that are used in the Settlement Agreement. This Attachment is for convenience only and should not be considered a part the Settlement Agreement itself. Except as specifically defined within the Settlement Agreement, the capitalized terms are from the ISO Transmission, Markets and Services Tariff or other operative documents, and the definitions below are to definitions as they now appear in those documents, and are subject to change from time to time pursuant to those documents.

“Alternative Price Rule” is defined in Section 11, Part III.I of the Settlement Agreement.

“Billing Policy” is Exhibit ID to Section I of the Tariff.

“Capacity Clearing Price” is the clearing price in the FCA for each Capacity Zone determined in accordance with Section 11, Part III.G of the Settlement Agreement and as more fully described in Section 11, Part III of the Settlement Agreement.

“Capacity Zone” is the geographic sub-region in the New England Control Area that is determined by the ISO in accordance with Section 11, Part III.A of the Settlement Agreement based on an identification of transmission limits that may bind in the FCA.

“Cold Weather Condition” is the existence of Effective Temperatures ≤ 0 degrees Fahrenheit (on peak hours) and Effective Heating Degree Days ≥ 65 .

“Cold Weather Event” is a day when Cold Weather Conditions are forecast to exist and the ISO forecasts a system wide capacity deficiency requiring the implementation of OP-4 actions (i.e., the 7-day capacity margin forecast ≤ 0 MW for an Operating day).

“Cold Weather Warning” is a day when Cold Weather Conditions is forecast to exist and the ISO forecasts tight capacity conditions (i.e., the 7-day capacity margin forecast > 0 MW and $< 1,000$ MW).

“Commitment Period” is as a period of either one year in duration (corresponding to the Power Year for which the FCA is held) or, for New Capacity, up to five years in duration (beginning with the Power Year for which the FCA is held), as described in more detail in Section 11, Part II of the Settlement Agreement.

“Conditional Approval Order” is a FERC order accepting or approving the Settlement Agreement conditioned on the modification of any of the terms of the Settlement Agreement.

“Cost of New Entry” or **“CONE”** is determined in accordance with Section 11, Part III.F of the Settlement Agreement.

“Day-Ahead” is the calendar day immediately preceding the Operating Day.

"Day-Ahead Energy Market" is the schedule of commitments for the purchase or sale of energy, payment of Congestion Costs, and payment for losses developed by the ISO as a result of the offers and specifications submitted in accordance with Section III.1.10 of Market Rule 1.

"De-list Bid" is a bid from Existing Capacity submitted in an FCA to be removed from the Forward Capacity Market, as described in more detail in Section 11, Part III.D.5 of the Settlement Agreement.

"De-listed Capacity" is all or a portion of a Capacity Resources that does not clear in a FCA, and any portion of such Resource for which a Permanent De-list Bid or De-list Bid has been accepted or has transferred its obligation pursuant to Section 11, Part IV.A.6 of the Settlement Agreement is not otherwise committed to provide capacity pursuant to a bilateral contract or reconfiguration auction.

"Deposit" is the financial assurance provided by New Capacity in order to submit a bid in a FCA for which it has been qualified pursuant to Section 11, Part II.B.3 of the Settlement Agreement.

"Economic Minimum Limit" or **"EcoMin"** is the maximum of the following values: (i) the minimum generation amount, in MWs, that a generating unit can deliver for a limited period of time without exceeding specified limits of equipment stability and operating permits; (ii) a level supported by environmental and/or operating permit restrictions; or (iii) a level that addresses any significant economic penalties associated with operating at lower levels that can not be adequately represented by three-part bidding. In no event shall the Economic Minimum Limit submitted as part of a generating unit's Offer Data be higher than the generation level at which a generating unit's incremental heat rate is minimized (i.e., transitioning from decreasing as output increases to increasing as output increases) except that a Self-Scheduled Resource may modify its Economic Minimum Limit on an hourly basis, as part of its Supply Offer, in order to indicate the desired level of Self-Scheduled MWs.

"Effective Date" is the date that the FERC approves the Settlement Agreement in its entirety without modifications or conditions or with such modifications or changes as are agreed to by the Settling Parties in accordance with Section 2 of the Settlement Agreement.

"Effective Heating Degree Days" is equal to: $68 - (\text{average of max and min Effective Temperature of the day})$.

"Effective Temperature" is equal to: $\text{dry bulb temperature} - [\text{windspeed} \times (65 - \text{dry bulb temp}) / 100]$.

"Existing Capacity" is any Resource that does not meet any of the eligibility criteria for New Capacity as provided in Section 11, Part II.B.3 of the Settlement Agreement or Import Capacity as provided in Section 11, Part II.C.2.a or b of the Settlement Agreement or any Resource that, subject to ISO evaluation, for the purposes of the first FCA, is under construction and within twelve months of its expected commercial operations date as described in Section 11, Part II.D.1 of the Settlement Agreement.

“Existing Import Capacity” is capacity that a party wishes to import in the FCA pursuant to a multi-year contract entered into before the qualification deadline to provide Capacity Resources during the Commitment Period from outside the New England Control Area as described more fully in Section 11, Part II.C.1.a of the Settlement Agreement.

“Export Bid” is a bid submitted in the FCA to export capacity from a Resource.

“Export Capacity” is any Resource within the New England Control Area seeking to submit a bid to export all or part of its capacity in the FCA or selling its De-listed Capacity to a buyer outside the Control Area following the FCA as described in Section 11, Part II.C.1.c of the Settlement Agreement.

“External Resource” is a generation resource located outside the metered boundaries of the New England Control Area.

“FCA Payment” is the payment for which each capacity Resource clearing in the FCA, or otherwise covered by a multi-year commitment, but not a Self-Supplied FCA Resource, shall be entitled to monthly based on the product of its MWs of capacity cleared in the relevant FCA and the Capacity Clearing Price in the appropriate location in the New England Control Area, as described in more detail in Section 11, Part V.A of the Settlement Agreement.

“Financial Assurance Policy” or **“FAP”** is Exhibit 1A, Exhibit IB, or Exhibit IC to Section I of the Tariff, as applicable.

“FERC” or **“Commission”** is the Federal Energy Regulatory Commission.

“Forward Capacity Auction” or **“FCA”** is the descending clock auction that is to be held annually each year in accordance with the Forward Capacity Market as described more fully in Section 11, Part III of the Settlement Agreement.

“Governance Participants” are the parties to the Participants Agreement and the NEPOOL Participants.

“HQI Excess” is the amount by which accepted Import Bids exceed the difference between the approved Phase I/II transfer limit and the approved MW of HQICCs.

“Hydro Quebec Interconnection Capability Credits” or **“HQICCs”** are credits that are granted to a Market Participant or group of Market Participants in accordance with the ISO System Rules, which may be used to satisfy the Market Participant’s UCAP requirement as determined in accordance with Section III.8.2 of Market Rule 1, where the value of such credits is determined in accordance with the ISO New England Manuals.

“Import Bid” is a bid in the FCA to import capacity from outside the New England Control Area, as described in more detail in Section 11, Parts II.C and III.D.4 of the Settlement Agreement.

“Inadequate Supply” is defined in Section 11, Part III.L.2 of the Settlement Agreement.

"Information Policy" is the policy on file with the Commission as part of the Tariff establishing guidelines regarding the information received, created and distributed by Participants and the ISO in connection with the New England Markets and the New England Transmission System.

"Intermittent Resources" are wind, solar and run-of-river hydro Resources, or such other Resources as determined from time to time pursuant to the Participant Processes that provides for consultation with state utility regulatory agencies as described in Section 11, Part II.E.1 of the Settlement Agreement.

"Installed Capacity Requirement" or **"ICR"** is the level of capacity required to meet the reliability requirements defined for the New England Control Area and calculated in accordance with Section III.8 of Market Rule 1. The Installed Capacity Requirement is used to determine an Unforced Capacity Requirement for the New England Control Area and individual Market Participants.

"Insufficient Competition" is defined in Section 11, Part III.L.2 of the Settlement Agreement.

"Internal Market Monitoring Unit" is the staff of the ISO designated to implement the mitigation measures set forth in Appendix A to Market Rule 1 for mitigation of market power.

"Local Sourcing Requirement" is the portion of the total capacity requirement of the load in a Capacity Zone that must be purchased from Resources located within that Capacity Zone after taking into account all of the capacity that can be reliably imported into the Capacity Zone.

"Load Serving Entity" or **"LSE"** is an entity that serves load in the New England Control Area.

"Locational Forward Reserves Market" or **"LFRM"** is the Locational Forward Reserves Market jointly filed by the ISO and NEPOOL in FERC Docket No. ER06-613-000.

"Locational Marginal Price" or **"LMP"** is as calculated in accordance with Section III.2 of Market Rule 1. The LMP for a Node (as defined in Market Rule 1) is the nodal price at that Node; the LMP for an External Node (as defined in Market Rule 1) is the nodal price at that External Node; the LMP for a Load Zone or Reliability Region (each as defined in Market Rule 1) is the Zonal Price for that Load Zone or Reliability Region, respectively; and the LMP for a Hub (as defined in Market Rule 1) is the Hub Price for that Hub.

"Market Monitor" is ISO's Internal Market Monitoring Unit.

"Market Participant" is a participant in the New England Markets that has executed a Market Participant Service Agreement, or on whose behalf an unexecuted Market Participant Service Agreement has been filed with and accepted or approved by the Commission.

"Market Rule 1" is ISO New England Market Rule 1 and the appendices and attachments thereto set out in Section III of the Tariff, as modified and amended from time to time.

"Market Rules" are the rules for the administration of the New England Markets filed with the Commission in accordance with the Participants Agreement and accepted by the Commission.

"Municipal Market Participant" is a Market Participant that is either a municipality or an agency thereof, or a body politic and public corporation created under the authority of one of the New England states, authorized to own, lease and operate electric generation, transmission or distribution facilities, or an electric cooperative, or an organization of any such entities.

"NCPC Charge" is the charge to a Market Participant as provided in Section III.3.2.3, Section III.6.4, and Appendix F of Market Rule 1.

"NCPC Credit" is the payment made to a Resource as provided in Section III.3.2.3, Section III.6.4 and Appendix F of Market Rule 1.

"New Capacity" is a Resource which has never been listed as a Capacity Resource (i.e., counted as capacity) in the New England capacity markets or a Resource that meets one of the four criteria listed in Section 11, Part II.B.2 of the Settlement Agreement.

"New Capacity FA Amount" is the financial assurance obligation of New Capacity whose bid has been accepted in the FCA equal to CONE (on a \$/kw-month basis) for that FCA multiplied by the number of kw of capacity awarded, as described in Section 11, Part II.G.2.b of the Settlement Agreement.

"New England Control Area" is the Control Area (as defined in Section II.1.11 of the Tariff) for New England, which includes PTF, Non-PTF, MTF and OTF. The New England Control Area covers Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, and part of Maine (i.e., excluding the portions of Northern Maine and the northern portion of Eastern Maine which are in the Maritimes Control Area).

"New England Markets" are the markets for the purchase of energy, capacity, ancillary services, demand response services, or other related products or services (including financial transmission rights) within the New England Control Area, as set forth in the Market Rule 1.

"New Import Capacity" is capacity that a party wishes to import in the FCA but without a multi-year contract before the qualification deadline to provide Capacity Resources during the Commitment Period from outside the New England Control Area as described in Section 11, Part II.C.1.b of the Settlement Agreement.

"Offer" is the amount a Supply Offer would have been but for the Offer Cap as set forth in Section 11, Part IV.A.5 of the Settlement Agreement.

“Offer Cap” is the amount defined in Section 1.10.1A(d)(viii) of Market Rule 1 above which an energy offer price may not be specified.

“Operating Day” is a calendar day period beginning at midnight for which transactions in the New England Markets are scheduled.

“Out of Market Bid” is a New Capacity Bid or a New Import Bid that, pursuant to Section 11, Part III.H.2 of the Settlement Agreement, is not allowed by the Market Monitor to set the Capacity Clearing Price.

“Participant Processes” shall mean those processes for Governance Participants outlined in Section 7.1.1 of the Participants Agreement.

“Peak Energy Rent” or **“PER”** is the amount determined in accordance with Section 11, Part V.B of the Settlement Agreement.

“Permanent De-list Bid” is a bid from Existing Capacity submitted in the FCA to be permanently removed from the Forward Capacity Market, as described in more detail in Section 11, Part III.D.3 of the Settlement Agreement.

“Pool-Planned Unit” is one of the following units: New Haven Harbor Unit 1 (Coke Works), Mystic Unit 7, Canal Unit 2, Potter Unit 2, Wyman Unit 4, Stony Brook Units 1, 1A, 1B, 1C, 2A and 2B, Millstone Unit 3, Seabrook Unit 1 and Waters River Unit 2 (to the extent of 7 MWs of its Summer Capability and 12 MWs of its Winter Capability).

“Poorly Performing Unit” is a Resource which, for purposes of qualifying to participate in the FCA, in any four-year period (a) receives three availability scores of less than or equal to forty percent (40 percent), and (b) fails to be available during at least ten (10) Shortage Events, as described in more detail in Section 11, Part V.C.7 of the Settlement Agreement.

“Power Year” is a period of twelve (12) months commencing on June 1 of each year and ending on May 31 of the next calendar year.

“Qualified Capacity” for the FCA and annual reconfiguration actions: (a) for New Capacity, is an amount in MWs equal to such New Capacity’s bid MWs, subject to demonstrations of at least that capacity in the qualification process; (b) for Existing Capacity, except as provided in Section 11, Part II.D.5 of the Settlement Agreement, is an amount in MWs equal to its Summer Seasonal Claimed Capability as adjusted pursuant to Section II.D.4 of the Settlement Agreement; (c) for Intermittent Resources and Demand Resources is the amount in MWs to be determined pursuant to the distinct method to be developed by the end of the fourth quarter of 2006 pursuant to the Participant Processes that includes consultation with state utility regulatory agencies.

“Real-Time” is a period in the current Operating Day for which the ISO dispatches Resources for energy and Regulation (as defined in Market Rule 1), designates Resources for Regulation and, if necessary, commits additional Resources.

“Real-Time Energy Market” is the purchase or sale of energy, payment of congestion costs, and payment for losses for quantity deviations from the Day-Ahead Energy Market in the Operating Day.

“Reserve Constraint Penalty Factors” or **“RCPFs”** are rates, in \$/MWh, that are used within the Real-Time dispatch and pricing algorithm to reflect the value of operating reserve shortages and are defined in Section III.2.8 of Market Rule 1.

“Resource” is a generating unit, a Dispatchable Load, an External Resource, or an External Transaction as defined in Market Rule 1.

“Resource Adequacy Assessment” or **“RAA”** is the assessment performed periodically by the ISO for each hour of each day in connection with system operations, as referred to in Section 11, Part VII.A of the Settlement Agreement.

“Seasonal Claimed Capability” is the maximum dependable load-carrying ability in kilowatts of a generating unit (or ISO-approved combination of units, as per OP 14) being rated, excluding capacity required for station use, for the Summer Period or Winter Period, as applicable.

“Self-Schedule” is the action of a Market Participant in committing and/or scheduling its Resource, in accordance with applicable ISO New England Manuals, to provide service in an hour, whether or not in the absence of that action the Resource would have been scheduled or dispatched by the ISO to provide the service.

“Self-Supplied FCA Resource” is defined in Section 11, Part II.F.1 of the Settlement Agreement.

“Self-Supply Option” is defined in Section 11, Part II.F of the Settlement Agreement.

“Settlement Agreement” is the Settlement Agreement Resolving all Issues dated March 6, 2006 in Docket No ER03-563-_____.

“Settling Party” a party to the Settlement Agreement.

“Shortage Event” is defined in Section 11, Part V.C.1.d of the Settlement Agreement.

“Successful FCA” is a FCA that has not been found to have Insufficient Competition or Inadequate Supply.

“Summer Period” is for each Power Year the four-month period from June through September.

“Supplemental Reserves” are the additional 1,000 MW of NCPC scheduled in accordance with Section 11, Part VII.D of the Settlement Agreement by the ISO if and as needed.

"Tariff" is the ISO New England Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3.

"Term Sheet" is the confidential document voted upon by the settling parties dated January 31, 2006 that was referenced in the Report filed by the Settlement Judge with the FERC on January 31, 2006 in Docket No. ER03-563-055.

"Transition Period" is the period of time commencing on December 1, 2006 and ending May 30, 2010, or as provided in Section 11, Part VIII.I.

"Unforced Capacity" or **"UCAP"** is the measure by which: (1) Installed Capacity suppliers will be rated, in accordance with the formulae set forth in the ISO New England Manuals, to quantify the extent of their contribution to satisfy the ISO Installed Capacity Requirement, and (2) the measure to determine if a Market Participant has met its procurement obligations relating to the Installed Capacity Requirement.

"Waiver Period" is the period of time from March 6, 2006 through the earlier of September 5, 2006, or the date on which the second FCA is successfully completed.

"Winter Period" is for each Power Year the eight-month period from October through May.

TABLE OF ABBREVIATIONS AND ACRONYMS

This Table provides definitions for abbreviations and acronyms used throughout the Settlement Agreement and related materials.

2d RNA	Second Restated NEPOOL Agreement
AGC	Automatic Generation Control
ARRs	Auction Revenue Rights
CONE	Cost of New Entry
CTRs	Capacity Transfer Rights
DCAs	Designated Congestion Areas
EcoMin	Economic Minimum Limit
EFORD	Demand Estimated Forced Outage Rate
FAP	Financial Assurance Policy
FCA	Forward Capacity Auction
FCM	Forward Capacity Market
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
HQICCs	Hydro Quebec Interconnection Capability Credits
ICR	Installed Capacity Requirement
IRH	Interconnection Rights Holders
ISO	ISO New England Inc.
kW	Kilowatt
LFRM	Locational Forward Reserves Market
LICAP	Locational Installed Capacity
LMP	Locational Marginal Price
LSE	Load Serving Entity
MMWEC	Massachusetts Municipal Wholesale Electric Company
Mobile-Sierra	"public interest" standard of review (set forth in <i>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</i> , 350 U.S. 332 (1956) and <i>Federal Power Commission v. Sierra Pacific Power Co.</i> , 350 U.S. 348 (1956))
MTF	Merchant Transmission Facilities
MW	Megawatt
NCPC	Net Commitment Period Compensation
NEMA	Northeast Massachusetts
NEPOOL	New England Power Pool
NYPA	New York Power Authority
OMOI	FERC Office of Market Oversight and Investigations
OP	Operating Procedure
OP-4	Operating Procedure 4, entitled "Action During a Capacity Deficiency"
OP-7	Operating Procedure 7, entitled "Action in an Emergency"

OTF	Other Transmission Facility
PER	Peak Energy Rent
PTF	Pool Transmission Facilities
RAA	Resource Adequacy Assessment
RCPFs	Reserve Constraint Penalty Factors
RFP	Request for Proposal
RMR	Reliability Must Run
RNA	Restated NEPOOL Agreement
ROCT	Rest of Connecticut
ROP	Rest of Pool
RSP	Regional System Plan
SWCT	Southwest Connecticut
UCAP	Unforced Capacity
WRC	Wellesley, Reading and Concord