

# BLOCK ISLAND UTILITY DISTRICT



*The New Harbor Circuit is being rebuilt with all new poles and larger conductor. The project is 80% complete. The new line is constructed for a Wye configuration and is ready for our voltage conversion. The new conductor is sized large enough to serve Champlin's marina post-voltage conversion.*

**BOARD OF COMMISSIONERS MEETING  
DECEMBER 3, 2019**

**Block Island Utility District**  
**December 3, 2019**  
**11:30 A.M.**  
**Town Hall, Old Town Road, Block Island**

1. Commissioner's Report
  - a. Election of Officers
2. Public Input
3. Approve Minutes of October 23, 2019 Regular Meeting
4. Receive and Act on Treasurers Report
  - a. Review and Act on Audit Proposals
5. Receive and Act on Presidents Report
6. Receive an Efficiency Program presentation by RI-Office of Energy (Approval in January Meeting)
7. Receive an update on Rate Case Filing
8. Receive and Act on Net Metering Proposal
9. Receive and Act on 2020 Operating and Capital Budgets
10. Receive and Act on EEI Master Agreement for BP Power Purchase Agreement
11. Discuss and Act on Draft Conflict of Interest Policy
12. Review and Act on 2020 Calendar (Regular and Annual Meetings)
13. Discuss and Act on Litigation\*

\*This item may be held in Closed Session pursuant to RIGL 42-46-5(2).  
(litigation: Sara McGinnes v. Town of New Shoreham & Howell Conant v. Block Island Power Company)

Individuals requesting services for the deaf and hard of hearing must call (401) 466-5851 forty-eight hours in advance of the meeting date. TTY: 711 Posted: 10/15/2019

**AGENDA ITEM 1**  
**COMMISSIONER'S REPORT**

**AGENDA ITEM 2**  
**PUBLIC INPUT**

**(PAGE PROVIDED FOR NOTE TAKING PURPOSES)**

**AGENDA ITEM 3**  
**APPROVE BOD MEETING MINUTES**

**October 23, 2019 Regular Meeting**

Block Island Utility District  
October 22, 2019  
**Town Hall, Old Town Road 3:30 PM**

**Minutes**

Present: Barbara MacMullan, Everett Shorey, William Penn, Mary Jane Balser, Elliot Taubman  
Also, Present: Jeff Wright, Christine Grele, a representative from the Block Island Times, and several members of the public

Barbara MacMullan called the meeting to order at 3:28 PM.

**1. Public Input**

- Chris Warfel extended an invitation from an EcoRI representative to speak with anyone about net metering. Jeff Wright and several board members were open to being contacted and suggested that such requests can go through the clerk who can distribute them to the board.
- Tony Pappas reported that he appreciated the cooperation of the Board and BIPCO staff in exploring a new solar initiative that he presented to the public recently.

**2. Commissioner's Report**

- Barbara MacMullan welcomed Elliot Taubman to the board and congratulated Mary Jane Balser on her re-election to the board. Taubman and Balser serve four-year terms.

**3. Approve Minutes of July 31, August 24 3:30, and August 24 Annual Meeting, 2019**

- Barbara MacMullan noted that there were insubstantial typos and errors in the minutes that members of the board can send to the clerk.
- Elliot Taubman requested clarification on a response to a question he asked the Energy New England Representative at the Annual Meeting.
- Barbara MacMullan requested to add the descriptor "Verizon modem bill" to clarify the savings realized from connecting to broadband reported in the Annual Meeting.

Barbara MacMullan moved to accept the July 31, 2019 minutes subject to the above, seconded by Everett Shorey. Ayes 4: (MacMullan, Shorey, Penn, and Balser). Recused 1: Taubman

Everett Shorey moved to accept the minutes from the August 24, 2019, 3:30 meeting subject to the above, seconded by Mary Jane Balser. Ayes 4: (MacMullan, Shorey, Penn, and Balser). Recused 1: Taubman

Barbara MacMullan moved to accept August 24, 2019, Annual Meeting minutes subject to the above, seconded by Mary Jane Balser. Ayes 4: (MacMullan, Shorey, Penn, and Balser). Recused 1: Taubman

**4. Receive and Act on Treasurers Report**

- William Penn presented the Treasurer's Report (on file), noting that all accounts complied with all policies. He recommended paying off the line of credit which has a balance of \$365,000, and Jeff Wright reported that he was planning to do so and will this week.

Barbara MacMullan moved to accept the Treasurer's Report, seconded by Mary Jane Balser. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

**a. Review and Act on Audit RFP**

- William Penn requested to be the second contact for inquiries.
- The board discussed the drafted schedule and timeline, and it was agreed to move the dates ahead, drafts due March 15, final Audit due April 1, leaving time for the board to review and approve the Audit before the April 30 filing deadline.
- William Penn asked if the request for a three-year commitment was appropriate, and the board agreed that this was reasonable.

William Penn moved to accept the RFP with the above corrections, seconded by Everett Shorey. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

**5. Receive and Act on Presidents Report**

- Jeff Wright presented the President's Report (on file)
- Everett Shorey asked about a decrease in commercial customers. Jeff Wright reported that is was due to the shift to commercial from residential due to demand trigger being hit.
- Jeff Wright reported that he is working with DEM to close out the BIPCO site. They require testing and removal of any contamination in the front of the plant. He scheduled a contractor for November 1, 2019 to do boring samples which will be the basis of a remediation plan.

William Penn moved to accept the President's Report, seconded by Mary Jane Balser. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

**6. Receive an update on Rate Case Filing**

- Everett Shorey reported that the filing of the application is complete.
- Jeff Wright reported that they had responded to the first round of discovery questions from the Division.
- William Penn asked when the new rates take effect. Jeff Wright reported June 1, 2020, following public hearings at PUC and public meetings on Block Island.
- Elliot Taubman asked about data from smart meters, and Jeff Wright reported that the meters have not been in place long enough to have reliable data for this rate filing.
- Chris Warfel asked why net metering was not in this rate case. Barbara MacMullan explained that the time needed to gather data and to restructure a net metering tariff would delay the rate filing and that the board wanted to realize savings in the new rate schedule as soon as possible.
- Tony Pappas asked if rate filings were on a mandated schedule. Barbara MacMullan and Jeff Wright reported that they are not, but that they take time, and there are costs associated with each filing.
- Mary Jane Balser asked if the new schedule shifts more costs to commercial customers than residential. Jeff Wright reported that costs are applied evenly across categories.

No Action Taken

**7. Receive an efficiency program presentation and draft efficiency program for future discussion**

- Barbara MacMullan reported that the board is considering an energy efficiency program that would cost \$360,000 over three years, 50% of which is shared by the state. More details should be available at the November board meeting. Jeff Wright added that the program builds on the BI Saves program that ran about five years ago.

- Chris Warfel talked about submetering, and Everett Shorey, Barbara MacMullan, and Jeff Wright responded that submetering is expensive to implement.
- Chris Warfel asked to have a copy of the draft program, and the board discussed how to make documents approved for public distribution more accessible. Jeff Wright reported that the web site is 95% complete. Until then, send requests to the clerk.
- Mary Jane Balser pointed out that we do know that the summer rentals drive up consumption significantly.

No Action Taken

#### **8. Discuss Net Metering: Receive Public Input and Discuss (Respond to Warfel Correspondence)**

- Barbara MacMullan reported that the board has been discussing the need to address Net Metering for some time as the utility has reached it is 3% cap, and the new private solar initiative increases the demand for solar projects.
- Jeff Wright explained the utility and customer costs of Net Metering versus the PURPA program. Adding that there is an opportunity for the utility to purchase large scale solar on the market that would make renewables less expensive for everyone. He then reported that a consultant had been hired to collect and analyze the data to prepare the board to consider revenue-neutral options.
- Chris Warfel reported that he had looked at the calculations and found several data errors that over-reported current net metering use, indicating that there may be an additional 18 kWh available for net metering. Jeff Wright reported that in the past month, a small waiting list has developed, and if the re-calculations are correct, individuals can be approved now. There followed a discussion on developing criteria for the waiting list, especially if a property owner is not ready to install a project when they become eligible.
- Socha Cohen asked if the board could make the technical details more accessible to interested persons by creating materials that explain the context of an issue, how a public utility works, relevant regulations, and a list of vocabulary. Mary Jane Balser pointed out how helpful, concise statements are, such as the current estimate that for every 1% of net metering, the utility endures of cost of \$20,000, an expense that is then passed on to all ratepayers.
- Elliot Taubman asked to include an analysis of net metering versus avoided costs. There was a discussion about avoided costs and the energy efficiency program.
- Chris Warfel asked if some of the current assets can be used to develop energy storage at BIPCO. Barbara MacMullan indicated that that would be a possibility, and the analysis should include the capital and social costs associated with sea-level rise when estimating the cost-benefits of replacing fossil fuels with renewables.
- Tony Pappas expressed concern that a delay in the new tariff may impact the new private solar initiative he is helping promote. Barbara MacMullan thought that there might not be a need to delay the new program.
- Chris Warfel noted that 40% of the costs of installing solar on the island now remain in the island economy.
- Barbara MacMullan suggested the board hold a meeting dedicated to just this topic after the board has received the necessary data.

No Action Taken

#### **9. Discuss and Act on Draft Conflict of Interest and Record Retention Policies**

- Barbara MacMullan asked if the COI policy language referencing mandated recusal could be simplified. Christine Grele responded that the language came from the state ethics guidelines. Kim Gaffett

questioned if this board needed to follow the state guidelines. Christine Grele reported that she would follow up on the question at the town ethics training scheduled for the next day. Bill Penn asked for more clarification on whether board members can receive meals while fulfilling their duties. Barbara MacMullan said she wanted to check in with legal counsel on the interpretation of the ban on compensation for board members to clarify if reimbursements for training and travel are considered compensation.

Tabled until more information is available

**10. Review potential items for future agenda and confirm next meeting times**

- Tony Pappas asked when the next meeting was. Barbara MacMullan reported that it is usually the fourth Tuesday of the month, but the November meeting falls close to Thanksgiving so that the board may reschedule, and they may add a meeting if the net metering data is available sooner.

No Action Taken

At 5:23 PM, Barbara MacMullan moved to go into closed session, seconded by William Penn. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

**11. Review and Act on a Long-Term Solar Purchase Power Agreement\***

**12. Discuss and Act on Litigation\***

**13. Discuss and Act on President's Job Description, Performance Review and Salary\***

\*These items may be held in Closed Session pursuant to RIGL 42-46-5 (litigation: Sara McGinnes v. Town of New Shoreham & Howell Conant v. Block Island Power Company)

At 5:40 PM, Barbara MacMullan moved to go out of closed session, seconded by Everett Shorey. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

Barbara MacMullan moved to seal the minutes of the closed session, seconded by Everett Shorey. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

At 5:41, Barbara MacMullan moved to adjourn, seconded by Everett Shorey. Ayes 5: (MacMullan, Shorey, Penn, Balser, and Taubman).

Pending Approval



**AGENDA ITEM 4**  
**TREASURER'S REPORT**

**REVIEW AND ACT ON AUDIT PROPOSALS**

**Block Island Utility District**  
**Balance Sheet**  
**October 31, 2019**

**ASSETS**

	October 30, 2019	Beginning March 26, 2019
<b><u>Property and Equipment</u></b>		
Land	\$ 840,271.79	\$ 822,024.06
Buildings	464,663.03	464,663.03
Machinery & Equipment	1,973,972.46	1,965,679.19
Distribution System	2,027,645.93	2,001,189.04
Office System, Furniture & Fixture	273,068.10	273,068.10
Transportation Equipment	19,945.60	12,289.57
Construction Work in Progress-Distribution	388,648.70	0.00
Total Property and Equipment	5,988,215.61	5,538,912.99
Total Accumulated Depreciation	<154,991.00>	0.00
<i>Net Utilities Plant</i>	5,833,224.61	5,538,912.99
<b><u>Current Assets</u></b>		
Cash - Main Checking	1,109,000.09	134,116.73
Cash - Sweep Acct	(0.00)	0.00
Accounts Receivable Elect	365,653.59	133,131.99
Allowance For Bad Debt	(19,587.93)	(19,587.93)
Accounts Receivable-Other	3,305.90	4,874.69
AR-Cash due from BIPCo	13,280.00	13,035.01
AR-Blackrock Acct due from BIPCo	97,961.90	105,435.21
Unbilled Revenue	0.00	172,271.82
Plant Material & Operation	242,595.13	155,645.53
Fuel Inventory	55,827.45	48,832.04
Prepaid Expenses	86,430.89	10,795.49
Total Current Assets	1,954,467.02	758,550.58
<b><u>Deferred Assets</u></b>		
Def. Regulatory Asset-retiremt	197,585.35	206,297.35
Def. Regulatory Asset-Eng.Res	0.00	0.00
Def. Regulatory Asset-RateCase	0.00	0.00
Def.Regulatory Asset-Interconnection	146,181.76	186,940.76
Total Deferred Assets	343,767.11	393,238.11
Total Assets	\$ 8,131,458.74	\$ 6,690,701.68

**Block Island Utility District**  
**Balance Sheet**  
**October 31, 2019**

**LIABILITIES AND CAPITAL**

	<u>October 30, 2019</u>	<u>Beginning March 26, 2019</u>
<b><i>Current Liabilities</i></b>		
Accounts Payable Trade	\$ 253,954.39	\$ 2,000.00
AP-NISC Admin Software	0.00	18,012.00
A/P - Customer Deposits	70,569.00	65,891.67
Accrued Purchase Power Expenses	271,885.77	156,548.64
Accrued Other Expenses	31,840.05	31,840.05
DSI Surcharge Payable	(255.20)	(56,429.18)
Accrued Payroll and Withholdings	<u>0.00</u>	<u>0.00</u>
Total Current Liabilities	627,994.01	217,863.18
<b><i>Deferred Credits</i></b>		
Deferred Revenue	111,480.87	80,954.99
SCR & Engine Maint Reserve	<u>380,714.63</u>	<u>380,714.63</u>
Total Deferred Credits	492,195.50	461,669.62
<b><i>Long-Term Liabilities</i></b>		
Line of Credit	0.00	90,943.22
Retirement Obligations	197,585.35	206,297.35
CFC Acquisition LOAN	<u>5,800,000.00</u>	<u>5,800,000.00</u>
Total Long-Term Liabilities	<u>5,997,585.35</u>	<u>6,097,240.57</u>
Total Liabilities	7,117,774.86	6,776,773.37
<b><i>Capital</i></b>		
Retained Earnings	<24,050.53>	<24,050.53>
Net Income	<u>1,037,734.41</u>	<u>(62,021.16)</u>
Total Capital	<u>1,013,683.88</u>	<u>&lt;86,071.69&gt;</u>
Total Liabilities & Capital	<u><u>\$ 8,131,458.74</u></u>	<u><u>\$ 6,690,701.68</u></u>

Block Island Utility District  
Income Statement  
For the Ten Months Ending October 31, 2019

Please note this is the  
First year of Operation  
beginning 3/26/19

	Current Month Actual	Year to Date Actual
<b>Revenues</b>		
<u>Revenue from Rates</u>		
Residential Sales	\$ 26,002.98	\$ 506,213.62
Commercial Sales	11,104.20	156,854.85
Demand Electric	47,364.10	1,015,492.68
Public Authority	7,324.42	115,632.73
Street Lighting	584.00	4,206.08
Customer Charge	25,799.92	188,876.29
Demand - All Rates	16,069.47	358,186.02
System Charge	-	77,369.12
<u>Other Revenue from Operations</u>		
Biller Penalty (Interest on Delinquent Accts)	3,872.00	11,083.32
Rent - Tower	15,891.71	113,966.27
Rent - Property	7,297.54	64,725.57
Misc. Income (Misc., Interest & Connections)	961.67	4,017.11
<b>Total Revenues</b>	<b>162,272.01</b>	<b>2,616,623.66</b>
<b>Expenses</b>		
<u>GENERATION-Operating Expense</u>		
Total Generation-Operating Expense	9,989.40	116,818.48
Total Generation-Maintenance Expense	9,445.85	45,990.85
Total Distribution-Operating Expense	10,472.97	115,698.63
Total Distribution-Maintenance Expense	11,386.78	113,645.99
Total Customer Accounts/Customer Service	6,274.52	42,553.68
Total Administrative/General Expenses	115,403.27	822,429.69
Total Depreciation Expenses	21,647.00	154,991.00
Total Interest Exp on Line & Long- term debt	-	126,205.08
Total Miscellaneous Expense	413.97	4,043.62
Total Taxes	3,872.17	36,512.23
<b>Total Expenses</b>	<b>188,905.93</b>	<b>1,578,889.25</b>
<b>Net Profit Before Fuel Rev./Exp.</b>	<b>(26,633.92)</b>	<b>1,037,734.41</b>
<u>Fuel Expenses/(Revenue)</u>		
Fuel/Standard Offer/Transmission income	(148,542.48)	(1,647,107.49)
Purchase Power Expenses	186,600.03	1,555,625.55
Net SO/TC due to ratepayers	(38,057.55)	91,481.94
<i>Net Fuel Expense/(Revenue)</i>	<i>-</i>	<i>0.00</i>
<b>Net Income</b>	<b>\$ (26,633.92)</b>	<b>\$ 1,037,734.41</b>
<u>Reserves Expenditures</u>		
Remove Depreciation Adj (A)	(21,647.00)	(154,991.00)
Debt Service Principal (includes CAT)	-	0.00
Inventory Purchased	5,632.17	86,949.60
Capital Exp - Work In Progress	159,729.42	388,648.70
Capital Exp - Distrib Work	-	-
Capital Exp - Other Assets	937.86	60,653.92
<i>Total Reserve for Exp.</i>	<i>144,652.45</i>	<i>381,261.22</i>
<b>Net Income Cash Budgetary Basis</b>	<b>\$ (171,286.37)</b>	<b>\$ 656,473.19</b>

Block Island Utility District  
Supplemental Information Statement  
For the Ten Months Ending October 31, 2019

Please note this is the  
Fist year of Operation  
begining 3/26/19

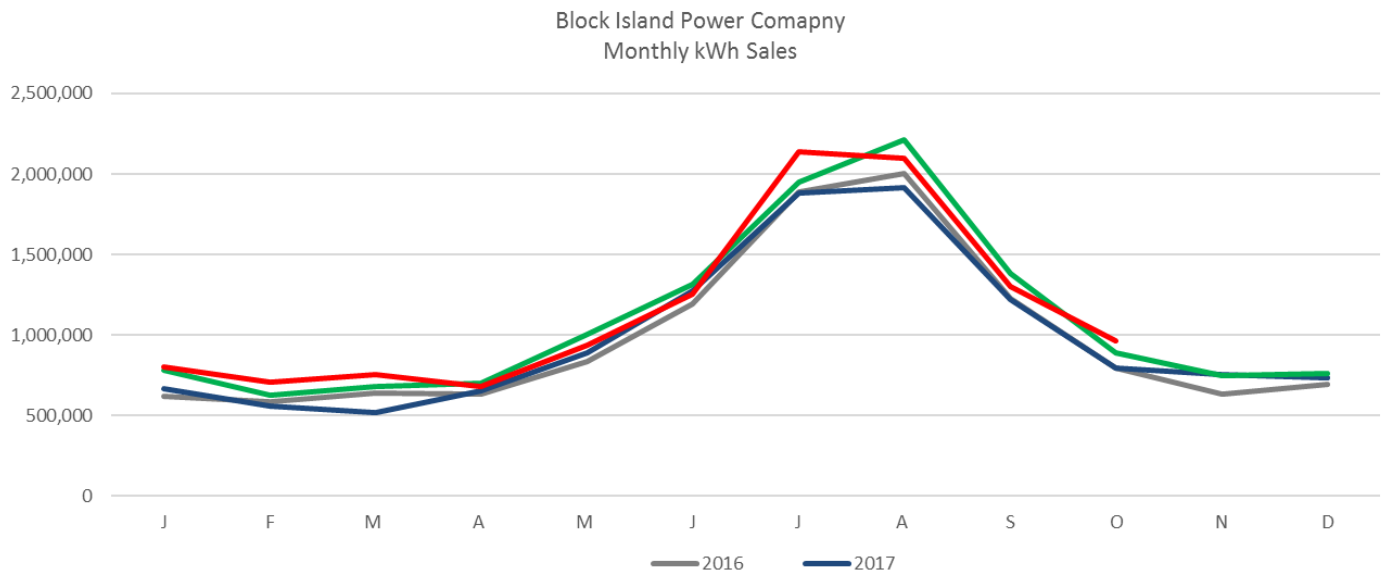
	Oct 2019	Oct 2018	Mar 26, 2019 thru Oct 2019	Mar 26, 2018 thru Oct 2018
<b>Rate Revenues</b>				
Residential Sales	\$ 26,002.98	\$ 26,367.00	\$ 506,213.62	\$ 554,565.03
Commercial Sales	11,104.20	11,104.00	156,854.85	213,281.04
Demand Electric	47,364.10	47,364.00	1,015,492.68	975,122.02
Public Authority	7,324.42	7,324.00	115,632.73	112,918.53
Street Lighting	584.00	583.00	4,206.08	4,199.00
Customer Charge	25,799.92	25,800.00	188,876.29	184,704.31
Demand - All Rates	16,069.47	16,060.00	358,186.02	342,932.24
System Charge	-	-	77,369.12	82,866.83
<b>Total Revenues</b>	<b>134,249.09</b>	<b>134,602.00</b>	<b>2,422,831.39</b>	<b>2,470,589.00</b>
			-1.93%	
<b>Rate Revenues -KWH Useage</b>				
Residential Sales	285,747	289,747	2,594,458	2,853,751
Commercial Sales	92,151	92,151	782,408	1,010,106
Demand Electric	434,533	434,533	5,400,493	5,106,606
Public Authority	73,428	73,428	694,485	679,203
<b>Total Revenues</b>	<b>885,859</b>	<b>889,859</b>	<b>9,471,844</b>	<b>9,649,666</b>
			-1.84%	
<b>Rate Revenues -Customer Counts</b>				
Residential Sales	1,294	1,294	9,063	9,339
Commercial Sales	300	300	2,138	2,269
Demand Electric	303	303	2,484	1,968
Public Authority	30	30	234	224
<b>Total Revenues</b>	<b>1,927</b>	<b>1,927</b>	<b>13,919</b>	<b>13,800</b>

	Sept 2019	Sept 2018	Mar 26, 2019 thru Oct 2019	Mar 26, 2018 thru Oct 2018
<b>Payroll</b>				
<b>Capital Exp - Work In Progress</b>				
Capitalized Labor	\$ 4,436.29	\$ 5,004.64	\$ 84,013.61	\$ 106,297.42
<b>Generation-Maintenance Expense</b>				
Inside Maintenance	-	-	7,103.05	3,229.28
Maint of Station Equipment	7,088.40	12,657.52	76,417.87	74,778.78
<b>Distribution-Operating Expense</b>				
Overhead lines	2,920.68	3,785.64	28,046.13	72,374.85
<b>Distribution-Maintenance Expense</b>				
Overhead Lines	9,172.31	13,603.07	54,838.24	62,792.74
tree trimming		969.26		969.26
<b>Customer Accounts/Customer Service</b>				
Records & Collections	5,033.00	6,602.98	35,609.44	35,429.80
<b>Administrative/General Expenses</b>				
Vacation Pay	-	488.76	15,185.68	8,172.28
Holidays worked	2,089.44	2,005.36	8,040.58	5,864.88
Holidays not worked	-	-	-	-
Sick Leave	7,689.12	201.88	24,067.53	3,744.20
Personal time	-	272.00	2,397.12	2,044.28
CEO Salary	13,379.21	11,826.92	92,028.23	78,230.61
<b>Total</b>	<b>\$ 51,808.45</b>	<b>\$ 57,418.03</b>	<b>\$ 427,747.48</b>	<b>\$ 453,928.38</b>

**AGENDA ITEM 5**  
**PRESIDENT'S REPORT**

### Financial Update

Sales: Kilo-watt hour sales were up slightly in October. YTD sales through the end of October are up 0.003%.



### Operational Update

**Pole Replacements:** We have completed (with the exception of one pole) our 2019 pole replacement program by transferring all poles that were set but not finished in the spring. The Energized Line Construction crews transferred thirty-nine poles in their first three weeks working for us. Energized Line Construction works on a time and material basis due to the logistical unknowns associated with working on the Island. Their 2019 and 2020 overall rates are lower than Riggs Distler and Haughland; both who have done work for us historically. Their productivity is far superior.

**New Harbor 3A Circuit Rebuild:** A combined effort between the Utility District crews and Energized Line Construction is underway now to completely rebuild the New Harbor circuit, including all new poles, 2/0 copper conductor which increases the lines capacity from 170 amps to 355 amps, all new transformers and guy wires. We have a small section left to do between the power company and the police station and the Boat Basin Tap which is scheduled to be finished after the first of the year.

This section of line is the first line built in the 4,160 WYE configuration. A full-sized neutral conductor was run which will enable the voltage conversion – which could be constructed as soon as the fall of 2020.

The New Harbor circuit will have adequate capacity to serve Champlin's Marina – post Voltage Conversion. It will require a six-pole express feeder to extend the New Harbor circuit from the Legion to the end of Chaplin's driveway as well as a new line down to the Marina.

Voltage Conversion: We have a team actively working on the voltage conversion who is tasked with developing a cost estimate and construction sequence by the end of the year. We have broken it down into multiple phases:

- 1) Substation/Generators/New Harbor (Fall 2020)
- 2) East Circuit (Spring 2021)
- 3) High Street to Medical Center (Fall 2021)
- 4) Remaining circuits TBD.

The construction sequence was the focus of a meeting in October which left me confident that the project can be accomplished without having to do it all at once. It also gave me some confidence that it might be done with no impact to rates. This will require some borrowing, use of existing capital funds and the use of the Voltage Conversion reserve fund (which is under review as part of the rate case).

I will present the construction plan and cost estimate in our January meeting.

Some examples of what our lines will look like post-voltage conversion are shown below. These are new poles constructed on the New Harbor circuit last week. The neutral conductor is 6.5' below the top of the pole, the town's fiber will be 40" below the neutral and the Verizon lines will be spaced 12" below the TNS fiber.





CFC Business Meeting/Visit: Barbara and I met with the CFC team to discuss future financing needs. We discussed the voltage conversion, pole replacements, employee housing, Utility District facilities and the spare transformer and potential Contribution-In-Aid-Contribution (CIAC) to National Grid which could reduce our Transmission costs by about \$50K per year.

CFC gave us their vote of confidence and full support. They recommended a shelf facility that they offer called "Power Vision" which is long term commitment to fund capital improvements which we could draw on as needed and as our balance sheet (equity) allowed. I followed this up with a meeting with the DPUC who was open to the concept and agreed to contemplate how the approval process might work.

Our immediate need right now is the spare transformer which CFC has agreed to handle as a stand-alone loan. This would increase our Standard Offer rate by only \$0.0025/kWh which I believe we will more than off-set by the saving from the NYPA power supply contract. The DPUC fully supports the purchase of the spare transformer.

## Environmental Update

Exploratory borings were drilled during the week of November 5<sup>th</sup>. We are awaiting the results of those boring before meeting with RI-DEM to determine next steps. The recommendation we are hoping for would be to remove the sampling catch basins and wells and reclaim the use of the front area. It would involve digging up the front of the power plant lot to removed piping and stone and then re-grading the yard. I expect further direction by next month's meeting.

## Other

Hull Suburban Lease: Discussions with Hull Suburban Propane are ongoing as we try and find space that will not impact the Utility District's long-term plans.

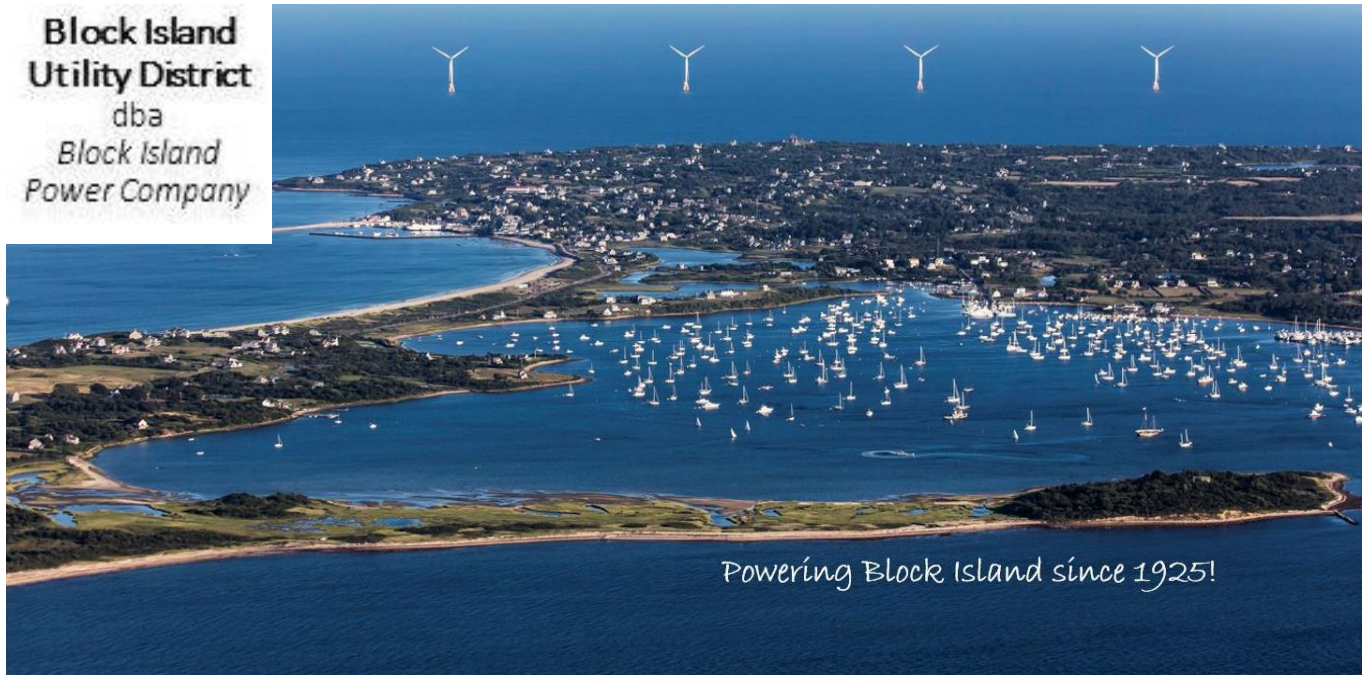
The Osprey nest platform behind the power company was rebuilt this past week. The platform is bigger, includes a perch for the male and is taller than the surrounding poles. We hope that this will encourage the Osprey's to stop their nesting activities on the National Grid poles which has caused two faults, tripping Deep Water off each time.

We have three additional locations we will be installing platforms; one near SW point to attract a nesting pair away from our lines and two others at the request of Kim Gaffett and the host landowners.



**AGENDA ITEM 6**  
**EFFICIENCY PROGRAM PRESENTATION**  
**AND DRAFT PLAN**

**Block Island  
Utility District**  
dba  
*Block Island  
Power Company*



## **Demand Side Management**

**2020 Plan**

**Docket #:**

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## Table of Contents

<b>1. Introduction and Background .....</b>	<b>3</b>
<b>2. DSM Sectors, Proposed Budget Allocation, Cost Recovery .....</b>	<b>5</b>
<b>3. Detailed Program Descriptions .....</b>	<b>7</b>
A. Residential Program Offerings: .....	7
i. Home Energy Audits .....	7
ii. Direct Install Measures .....	8
iii. Weatherization Measures .....	8
iv. HVAC Measures .....	10
B. Business Program Offerings: .....	13
i. Business Energy Assessments .....	13
ii. Direct Install and Other Lighting Measures .....	13
iii. Weatherization Measures .....	14
iv. Business HVAC Measures .....	15
<b>4. Program Administration and Management .....</b>	<b>17</b>
i. Vendor Engagement .....	18
ii. Program Management and Oversight .....	18
iii. Customer Engagement .....	19
iv. Program Reporting .....	19
<b>5. Conclusion .....</b>	<b>20</b>
<b>6. Appendices and Supporting Documentation .....</b>	<b>21</b>

## **Block Island Utility District – 2020 Demand Side Management Plan**

### **1. Introduction and Background**

Demand side management (DSM) is important because it can provide benefits to both customers as well as the electric grid. A DSM program provides access and incentives for technologies that allow customers to optimize their energy usage and reduce their utility bills. Reducing energy usage, particularly during peak seasons or times of day, can also have grid-wide benefits for the Utility (like reduced maintenance or capital expenditures) and for all customers through reduced peak charges and greater service reliability. The Block Island Utility District (BIUD) is proposing to establish a DSM program to provide its 1,900 customers access to energy efficiency programs that will benefit them and improve the service and reliability of the island's electric grid.

Block Island is a unique community because of its geographic separation from the mainland and its variable, tourist-driven seasonal usage profile. The community of New Shoreham and the grid that serves it needs to be flexible enough to handle the increased summer population, as well as reliable and resilient enough to provide service to the year-round residents and businesses, even in the face of harsh winter conditions.

Given its unique size, location, and seasonal usage spike, demand side management is especially important on Block Island and aligns with many of BIUD's goals outlined in the proposed rate case filing (Docket #4975). Specifically, the Utility wants to empower its customers to make choices that help control their energy usage, reduce energy burdens on customers, improve resource allocation, and encourage the adoption of innovative new technologies that maximize the benefits of Block Island's smart meters. By creating the proposed DSM program, the Utility seeks to tap into the benefits that efficiency programming can provide and leverage those benefits to all of its customers.

The proposed 2020 DSM plan for the Block Island Utility District (BIUD) represents an evolution of prior energy efficiency work conducted in New Shoreham through the Block Island Saves Pre-Pilot and Pilot Programs. These programs ran from 2015-2017 and were administered and funded solely by the Rhode Island Office of Energy Resources (RGGI allocation plan(s) and the accompanying Memorandum of Understanding are in Appendix A). The utility, working in collaboration with the Office of Energy Resources (OER), envisions the proposed DSM plan as a robust iteration of the original *Block Island Saves* pilot, which leverages best practices from that program, as well as Rhode Island's nation-leading mainland efficiency programming, as well as addressing the unique needs of the community.

The original *Block Island Saves* program began as a pre-pilot program with the support of the New Shoreham Town Council, fully managed and funded through OER. The pre-pilot was conducted to test energy efficiency programs on Block Island and recruit a small group of pre-

pilot participants. Of the 24 pre-pilot applications received, ten residents and five businesses were selected to participate in the pre-pilot (those not selected were later able to participate in the full pilot).

Pre-pilot participants received a free energy assessment of their home or business. Participants received a list of recommendations for energy efficiency improvements and associated rebates or incentives. Overall, the pre-pilot program incentives and rebates were found to be cost-effective and successful in motivating participants to install energy-efficient measures. The success of the pre-pilot in terms of participation, interest, opportunities, and cost-effectiveness prompted the expansion of the pre-pilot program to a full-scale pilot. Program offerings in the full pilot were identical to the pre-pilot phase.

During the full-pilot phase, additional home and business audits were conducted and altogether, the *Block Island Saves* program engaged 110 participants. Program participants are saving 313 MWh of electricity, 271 MMBtu of oil, and 136 MMBtu of propane annually. Participants were also able to decrease their energy bills, saving an aggregate \$597,968 (residential) and \$714,396 (business) over the lifetime of the efficiency upgrades.

Lessons learned from the *Block Island Saves* program were conveyed by OER to both the Utility and the public through a full report, which is available on the OER website<sup>1</sup>, and those lessons and best practices have informed the development of this proposed plan.

The proposed 2020 DSM plan incorporates a number of elements from the successful *Block Island Saves* pilot, such as the no-cost assessments with direct install measures and incentives for weatherization. Based on the interest and adoption of those measures during the pilot the Utility intends to include those same elements as a foundation for 2020. The proposed plan also seeks to prepare New Shoreham residents for the changing energy landscape by promoting the installation of newer, highly efficient heat pump equipment, Wi-Fi programmable thermostats, and broad adoption of weatherization measures.

A significant point of difference between the proposed 2020 plan and the pilot is the expansion and enhancement of the HVAC and water heating programs. The proposed DSM plan includes an incentive for the adoption of high-efficiency heat pump heating and cooling systems, rather than just for cooling, as well as heat pump water heaters. In combination with the newly proposed rate structure (described below in section 2.B), BIUD feels that the adoption of heat pumps for heating and cooling needs will be an attractive option for customers that provides significant energy and cost savings, particularly for delivered fuel customers who convert or supplement their systems.

Heat pump technology is an important tool in helping BIUD to smooth out the load curve and provide opportunities for customers to reduce their energy burden. In addition to aligning with the Utility's goals for its customers, heating electrification also helps Rhode Island meet its Greenhouse Gas Emission goals, a key State policy objective the Utility can contribute to. BIUD

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<sup>1</sup> <http://www.energy.ri.gov/documents/archived-reports/Block%20Island%20Saves%20Pilot%20-%20Full%20Report%20-%20April%202018.pdf>



wants to ensure that the DSM program offers New Shoreham residents and businesses the same opportunities for improved comfort and energy savings that other Rhode Islanders receive and feel that promoting heat pump technology is one important way to achieve that.

Lastly, the proposed DSM plan emphasizes Wi-Fi programmable thermostats to encourage more widespread adoption of these measures. In addition to the energy saving benefits provided by more efficiently managing heating and cooling, having a high penetration of smart devices like these increases the opportunity for the Utility to offer demand response programming in the future. This is especially attractive on Block Island, where smart metering infrastructure is already in place and summer peak demand is especially high because of the seasonal increase in inhabitants. Being able to have a broad network of smart thermostats provides the Utility an opportunity to further manage demand, especially during the expensive summer peak season.

## **2. DSM Sectors, Proposed Budget Allocation, Cost Recovery**

The proposed Block Island DSM portfolio is broken into three major sectors – Assessment and Installation; Inspection and Program Administration; and Customer Outreach.

In the Assessments & Installation sector, there are programs for Residential audits and weatherization, Residential HVAC, Business audits and weatherization, and Business HVAC and water heating. The distinction between Residential and Business programs allows BIUD to track the distribution of costs and benefits within and between the two distinct sectors, and because each of those programs incentivizes slightly different measures and so a clear distinction is necessary. This sector, overall, comprises the full costs of audits at homes and businesses, including the direct install measures, as well as rebate incentives for additional measures (e.g. weatherization, HVAC) and as a result, makes up the bulk of the program budget.

The Inspection and Program Administration category covers the costs of inspection for any residential weatherization or HVAC measures installed through the program, as well as any business direct install measures, weatherization, or other measures installed through the program. It is important to provide inspection and verification for deeper measures both to ensure proper installation so that the customer is reaping the full benefit of the measure, but also for verification and reporting on energy savings resulting from these measures. Efficiency programs need to report on their progress and energy savings to the Public Utilities Commission and utilizing verified data from post-installation inspections helps ensure the accuracy of that data and the efficacy of those reports, in addition to ensuring customer satisfaction and realization of the expected energy benefits. The efficiency consultant BIUD proposes to hire will assist the Utility in administering the program, managing the tracking and reporting of data, processing incentive rebates, and making suggestions for future program improvements (RFP for efficiency consultant attached in Appendix B).

The Customer Outreach category covers the costs of promoting and running the DSM program. The costs associated with the program are to ensure that BIUD can engage with customers and ensure they are aware that a demand side management program is operational in New Shoreham and to inform them on how to participate and what the benefits are.



#### A. Proposed 2020 Budget Allocations

The budget numbers included below are based on actual project costs and participation levels from the pilot program, *Block Island Saves*, and adjustments to those numbers based on anticipated participation numbers and changes in unit costs since 2017 when the pilot concluded.

Table 2.1 Proposed 2020 DSM Plan Budget Allocations		
<u>Sector</u>	<u>Proposed Budget</u>	<u>Notes</u>
<u>Assessment &amp; Installation Sector</u>		
Residential Audits and Weatherization	\$35,700.00	30 Energy Audits & 6 Weatherizations
Residential HVAC & Water Heating	\$6,000.00	10 Wi-Fi Thermostats; 5 Water Heaters; 6 Heat Pumps; 2 Weatherization Bonus
Business Audits and Weatherization	\$38,800.00	10 Energy Audits & 2 Weatherizations
Business HVAC & Water Heating	\$3,400.00	5 Wi-Fi Thermostats; 2 Heat Pumps; Other
<b>Sector Total</b>	<b>\$83,900.00</b>	
<u>Inspection and Program Administration Sector</u>		
Inspection Services		Inspections for Residential Weatherization, Business Audits and Weatherizations
Program Administration		Efficiency Consultant Services
<b>Sector Total</b>	<b>\$31,600.00</b>	
<u>Customer Outreach Sector</u>		
<b>Sector Total</b>	<b>\$4,500.00</b>	Advertising in Block Island Times, Bill Inserts, and Community Bulletin
<b>Total Budget</b>	<b>\$120,000.00</b>	

#### B. Cost Recovery and Other Funding Sources

Block Island Utility District, through its new rate case in Docket # 4975, proposed a new rate design with implications for the demand side management plan and its budget. The current rate structure is a two-tier structure with peak and off-peak seasonal rates for all customer classes. In its proposed rate case, BIUD has suggested implementing a three-tier rate structure with peak, shoulder, and off-peak rates for all customer classes as well as an efficiency surcharge.

Table 2.2 - Current Block Island Utility District Rate Structure											
OFF-PEAK					PEAK				OFF-PEAK		
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC

Table 2.3 - Proposed Block Island Utility District Rate Structure											
OFF-PEAK				SHOULDER		PEAK		SHOULDER		OFF-PEAK	
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
				EFFICIENCY SURCHARGE							

Through the proposed rate redesign, BIUD estimates it will generate revenues of \$60,000 from the efficiency surcharge to support DSM program implementation in 2020. The Utility's efficiency surcharge dollars will be supplemented in equal part by Regional Greenhouse Gas Initiative (RGGI) proceeds provided by the Office of Energy Resources, leading to a total capitalization of the DSM program at \$120,000 for 2020. RGGI proceeds from OER will be provided for three years, beginning in 2020, to support BIUD's DSM programming in conjunction with the annual efficiency surcharge monies.

### 3. Detailed Program Descriptions

#### A. Residential Program Offerings:

Refer to Table 2.1 for full program budget; residential subsection reproduced below.

Table 3.1 – Assessment and Installation Sector – Residential Program Budgets		
Program	Proposed Budget	Notes
Residential Audits and Weatherization	\$35,700.00	30 Energy Audits & 6 Weatherizations
Residential HVAC	\$6,000.00	10 Wi-Fi Thermostats; 5 Water Heaters; 6 Heat Pumps; 2 Weatherization Bonus

#### i. Home Energy Audits

Residential energy assessments with no-cost direct install measures are critical for households to reduce energy use, lower their energy costs, and identify opportunities for additional, deeper savings. The home energy audit is a focal point of the proposed DSM plan as it allows for comprehensive evaluation of the residential building stock, direct installation of energy saving measures (e.g. LED light bulbs, smart power strips) and the opportunity to identify deeper savings opportunities customers can pursue, like weatherization or HVAC equipment upgrades. It often serves as the initial contact point for customers and what the Utility hopes is the start of

an ongoing, beneficial relationship for the customer as they become more aware of their energy use and seek to make continual energy improvements to their home.

Each home energy audit, conducted by an energy assessor, will include a whole-home evaluation, a blower door test to check for proper air sealing, a heating system safety test to check the health and safety of that equipment, and a number of direct install measures the assessor will put into place during the visit. At the conclusion of the audit, the customer will receive a home energy action plan outlining additional energy savings measures the customer can implement and the estimated costs and BIUD incentives associated with those measures, as well as information and tips on how to better manage their energy use and reduce costs. These comprehensive assessments are provided to the customer free of charge and are open to all residential customers of Block Island Utility District.

ii. Direct Install Measures

As part of the Home Energy Audits, each energy assessor will install a number of energy saving measures in each home, as needed, at no cost to the customer. The proposed 2020 DSM plan proposes the following direct install measures:

Table 3.2 – Proposed Direct Install Measures and Incentives			
Measure	Expected Quantity	Incentive Level	Notes
LED Lightbulbs	360	Free	No limit; expect 12 per audit
Smart Power Strips	2	Free	Maximum of 2 per audit
Low-Flow Shower Heads	30	Free	Expect 1 per audit
Aerator faucets	45	Free	Expect 1.5 per audit

LED Lightbulbs – installed in place of existing incandescent or CFL bulbs throughout the home, any number of bulbs can be replaced during the audit.

Smart Power Strips – up to two (2) smart power strips that help reduce electricity usage of devices that would otherwise be constantly using electricity.

Faucets and Showerheads – Low-flow showerheads and aerator faucets that help reduce water and energy usage, any number can be installed throughout the home during the audit.

These low-cost measures are proven energy saving devices that provide immediate benefits to customers who have a home energy audit completed.

iii. Weatherization Measures

One of the outcomes BIUD hopes to achieve with its proposed DSM program is to educate customers about the benefits of weatherization and to properly incentivize them to undertake these additional measures. Residential customers with weatherization opportunities will be made aware of those through the home energy action plan provided at the conclusion of the audit, as

well as given information about potential costs and incentive levels offered by BIUD for those measures.

The benefits of weatherization efforts are increased comfort to occupants year-round (warmer in the winter and cooler in the summer), as well as reduced energy usage and costs. Many homeowners are dealing with high energy bills year-round without realizing that proper weatherization techniques can make a serious impact in alleviating these issues. The proposed DSM plan offers the following options as part of the weatherization program:

Table 3.3 – Proposed Weatherization Measures and Incentive Levels			
Measure	Expected Quantity	Incentive Level	Notes
Air Sealing	5	Up to 10 labor hours free (\$800 value) plus 40% off further sealing, up to \$2,000 in total weatherization costs	Based on prior adoption rates and expected home energy audit numbers
Duct Sealing	1		
Insulation	6		
Pipe Insulation	1		
Weatherization Bonus	2	\$250	For customers who insulate and install a heat pump system

**Air Sealing** – The sealing of air leaks in and around windows and doors to reduce the loss of heated or conditioned air to the outside.

**Duct Sealing** – The sealing of leaks around ductwork to ensure that all heated or conditioned air enters the living spaces and is not lost in the walls/ceilings or to the outside.

**Pipe Insulation** – Improving the insulation around hot water pipes to reduce heat loss and protect against pipe freezing during the winter months.

**Insulation** – Installing improved insulation in the walls, ceilings, and floors of the home to improve the building envelope, leading to increased comfort as heated or conditioned air remains in the home rather than escaping to the outside.

An additional feature within the residential program is the inclusion of a weatherization bonus. Customers can receive an additional \$250 rebate if they bundle insulation work alongside the installation of a heat pump heating and cooling system. In order to qualify for the bonus incentive offering, customers need to undertake insulation work and then a heat pump heating/cooling system installation. BIUD is proposing to offer this bonus incentive for bundling insulation and heat pump systems because of the importance of properly weatherizing homes, generally, and in conjunction with the efficient operation of heat pump systems specifically.

Customers who take advantage of incentives for the included weatherization measures will be given their incentive in the form of a rebate payment after work has been completed and inspected, when required. Rebate forms are available to customers both online and in person at the BIUD office and will require customers fill them out, including address and utility account

information, as well as including proper documentation in the form of a receipt or work order from the contractor who performed the job (Sample Rebate Forms included in Appendix D). If a customer has any problems or questions regarding a rebate form, their contractor may be able to help complete relevant fields at the completion of the job, and customers can always reach out to BIUD staff for assistance.

#### iv. HVAC Measures

The home energy action plan generated through the audit process will also provide information to customers about opportunities to upgrade inefficient heating and cooling equipment in the home. The proposed DSM plan focuses on promoting the adoption of high-efficiency heat pump systems for heating/cooling as well as heat pump water heaters. The electrification of heating and cooling is an important step in reducing greenhouse gas emissions and the Utility's recently proposed three-tier rate structure with a lower winter electricity price makes the adoption of electric heating measures more cost effective for customers. Additionally, the adoption of Wi-Fi programmable thermostats allows residents the ability to better control and monitor their heating and cooling energy usage, save money, and set themselves up for participation in demand response programming the Utility may consider in the future.

The proposed DSM plan will incentivize the following equipment, at the following levels, as part of the Residential HVAC program:

Table 3.4 – Proposed HVAC and Water Heater Measures and Incentives				
Equipment	Rating	Proposed Rebate	Expected Quantity	Notes
Central Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥9	\$250 per ton	2	Seasonal Energy Efficiency Rating (SEER) measures air conditioning and heat pump cooling efficiency. A SEER rating is a maximum efficiency rating, similar to the miles per gallon for a car.  Heating Seasonal Performance Factor (HSPF) is used to measure the efficiency of heat pumps and the higher the HSPF the greater the energy efficiency.
Ducted or Mixed Ducted Mini-Split Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥9	\$250 per ton	2	
Ductless Mini-Split Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥10	\$150 per ton	2	
Heat Pump Water Heaters	ENERGY STAR ≤ 55 gallon; should have a minimum UEF of 2.00	\$300 rebate	4	Uniform Energy Factor (UEF) is a new metric for determining the energy efficiency of a water heater utilized by the Department of Energy. The higher the UEF, the higher the equipment's efficiency and the lower the energy bill
	ENERGY STAR >55 gallon should have a minimum UEF of 2.70	\$150 rebate	1	Uniform Energy Factor (UEF) is a new metric for determining the energy efficiency of a water heater utilized by the Department of Energy. The higher the UEF, the higher the equipment's efficiency and the lower the energy bill
Wi-Fi Thermostats		\$100 Rebate	10	
*Rebate not to exceed \$500 per customer for this program (excluding thermostats).				

Block Island Utility District wants to promote the adoption of high-efficiency electric heat pumps to customers through an incentive structure based on a per ton amount that is more flexible than a flat rate amount, given the importance of proper sizing of heat pump systems and the variability in size from home to home. Additionally, given the newly proposed three-tier rate structure with lower winter electric rates, BIUD anticipates that the rate structure and DSM incentives will drive adoption of this new technology. Qualifying units will meet the SEER and/or HSPF ratings specified for each system type, which align with the efficiency ratings contained in the Northeast Energy Efficiency Partnerships (NEEP) cold climate heat pump specification list and is considered the industry standard for this technology.

Alongside the incentive for heat pump based heating and cooling systems, we are also proposing to incentivize heat pump water heaters through the program. Given the smaller variation in equipment size, associated energy savings expected, and to align closely with other Rhode Island efficiency programs BIUD will be offering flat rate incentives of \$300 and \$150 for heat pump water heaters, based on size. Units 55 gallons and smaller provide a greater opportunity for energy savings and as such, are incentivized at a higher level than units over 55 gallons in size. Qualifying units will have a minimum uniform energy factor (UEF) of 2.0 for the smaller units and a minimum UEF of 2.7 for the larger systems. ENERGY STAR heat pump water heaters can save the average household \$330 per year and 2,690 kwh compared to a standard electric hot water heater.

Because heat pump technology is still new and because the pilot program on Block Island did not include heating and cooling heat pump systems as part of the incentive structure, the Utility is proposing to cap the incentive level at \$500 per customer for these measures initially. BIUD want to strike a balance between providing a reasonable incentive to drive adoption of this technology alongside the ability to provide some incentive to a larger number of customers who may be interested in taking advantage of this opportunity.

As previously mentioned in section 3.A.iii, *Weatherization*, BIUD is proposing to include a Weatherization bonus of \$250 for customers who insulate and then install a heat pump heating and cooling system. Full details of this rebate are provided in that section.

As a final measure included in the residential HVAC and water heater program, the Utility will be incentivizing Wi-Fi enabled programmable thermostats. Programmable thermostats are a great piece of technology to help manage a home's energy usage efficiently and conveniently. Also, because Block Island has smart meters installed across the island, increasing the number of devices that beneficially interact with those meters, now and in the future, maximizes the benefits of having them in place. For example, having lots of customers adopt Wi-Fi thermostats increases the savings potential if the Utility were to offer demand response programming in the future. BIUD is proposing a \$100 incentive to customers who purchase a qualifying Wi-Fi enabled thermostat, an incentive level that is comparable or better than other efficiency programs in Rhode Island. The Utility is proposing a higher incentive level for these devices because the deployment of this technology provides benefits to customers, aligns with Utility goals such as maximizing smart meter technology and innovation, as well as interacting favorably with the proposed emphasis on heating electrification.

Customers who take advantage of incentives for the included HVAC measures will be given their incentive in the form of a rebate payment after work has been completed and inspected, when required. Rebate forms are available to customers both online and in person at the BIUD office and will require customers fill them out, including address and utility account information, as well as including proper documentation in the form of a receipt or work order from the contractor who performed the job (Sample Rebate Forms included in Appendix D). Customers submitting rebates for eligible Wi-Fi thermostats need only provide a purchase receipt as proper documentation with their rebate form. If a customer has any problems or questions regarding a rebate form, their contractor may be able to help complete relevant fields at the completion of the job, and customers can always reach out to BIUD staff for assistance.

**B. Business Program Offerings:**

Refer to Table 2.1 for full program budget; business subsection reproduced below.

Table 3.5 – Assessment and Installation Sector – Business Program Budgets		
<b>Program</b>	<b>Proposed Budget</b>	<b>Notes</b>
Business Audits and Weatherization	\$38,800.00	10 Energy Audits & 2 Weatherizations
Business HVAC & Water Heating	\$3,400.00	5 Wi-Fi Thermostats; 2 Heat Pumps; Other

**i. Business Energy Assessments**

As with the residential program, the initial no-cost energy assessment for business and commercial customers is a foundational focus of the proposed DSM program. Comprehensive evaluation of the commercial spaces of New Shoreham enables the auditor to complete direct install measures (like screw-in LED bulbs) that provide immediate savings, deliver a comprehensive energy action plan to the customer with recommendations for additional savings measures, and allows BIUD to establish an ongoing relationship with that customer as they pursue energy efficiency improvements.

Each business energy assessment, conducted by an energy assessor, will include a whole-business evaluation of the electrical equipment and thermal systems as well as directly installing screw-in LED lightbulbs, as appropriate. At the conclusion of the audit, the customer will receive a business energy action plan outlining additional energy savings measures the customer can implement and the estimated costs and BIUD incentives associated with those measures, as well as information and tips on how to better manage their energy use and reduce costs. These comprehensive assessments are provided to the customer free of charge and are open to all business customers of Block Island Utility District.

**ii. Direct Install and Other Lighting Measures**



Table 3.6 – Proposed Business Direct Install and Other Lighting Measures and Incentives			
Measure	Expected Quantity	Incentive Level	Notes
Screw-in LED Lightbulbs	60	Free	No limit; expect 6 per audit
LED fixture upgrades	20	80% of costs covered	Expect 2 per audit
Lighting controls	10		Expect 1 per audit
Occupancy sensors	20		Expect 2 per audit

As part of the business energy audits, each energy assessor will install screw-in LED lightbulbs in as many fixtures as needed throughout the property. Recognizing that many business environments have different lighting needs from residential customers and screw-in LED lightbulbs may not upgrade the entirety of the lighting for a given business, the proposed DSM plan will incentivize additional lighting measures as well. Upgraded fixtures, lighting controls, and lighting sensors (such as occupancy sensors) will be listed on the energy action plan as an additional energy saving measure that customers can pursue, and approved equipment will be incentivized at 80% of total cost.

Customers who take advantage of incentives for the approved business lighting measures will be given their incentive in the form of a rebate payment after work has been completed and inspected, when required. Rebate forms are available to customers both online and in person at the BIUD office and will require customers fill them out, including address and utility account information, as well as including proper documentation in the form of a receipt or work order from the contractor who performed the job (Sample Rebate Forms included in Appendix D). If a customer has any problems or questions regarding a rebate form, their contractor may be able to help complete relevant fields at the completion of the job, and customers can always reach out to BIUD staff for assistance.

### iii. Weatherization Measures

One of the outcomes BIUD hopes to achieve with its proposed DSM plan is to educate customers about the benefits of weatherization for their business and to properly incentivize customers to undertake these additional measures. Business customers with weatherization opportunities will be made aware of those through the energy action plan provided during the audit, as well as given information about potential costs and incentive levels offered by BIUD for those measures.

The benefits of weatherization efforts are increased comfort to occupants year-round (warmer in the winter and cooler in the summer), as well as reduced energy usage and costs. Many businesses are dealing with high energy bills year-round without realizing that proper weatherization techniques can make a serious impact in alleviating these costs. The proposed DSM plan offers the following options as part of the weatherization program for business customers:

Table 3.7 – Proposed Business Weatherization Measures and Incentive Levels			
Measure	Expected Quantity	Incentive Level	Notes
Air Sealing	2	Up to \$1,200 in free air sealing plus 40% off further sealing, up to \$4,200 in total weatherization costs or up to \$3,000 in insulation costs	Based on prior adoption rates and expected business energy audit numbers
Duct Sealing	1		
Insulation	1		
Pipe Insulation	1		

Air Sealing – The sealing of air leaks in and around windows and doors to reduce the loss of heated or conditioned air to the outside.

Duct Sealing – The sealing of leaks around ductwork to ensure that all heated or conditioned air enters the living spaces and is not lost in the walls/ceilings or to the outside.

Pipe Insulation – Improving the insulation around hot water pipes to reduce heat loss and protect against pipe freezing during the winter months.

Insulation – Installing improved insulation in the walls, ceilings, and floors of the home to improve the building envelope, leading to increased comfort as heated or conditioned air remains in the home rather than escaping to the outside.

Customers who take advantage of incentives for the approved business weatherization measures will be given their incentive in the form of a rebate payment after work has been completed and inspected, when required. Rebate forms are available to customers both online and in person at the BIUD office and will require customers fill them out, including address and utility account information, as well as including proper documentation in the form of a receipt or work order from the contractor who performed the job (Sample Rebate Forms included in Appendix D). If a customer has any problems or questions regarding a rebate form, their contractor may be able to help complete relevant fields at the completion of the job, and customers can always reach out to BIUD staff for assistance.

#### iv. Business HVAC Measures

Business customers have more varied building uses and often larger equipment needed to support those operations. In order to ensure that the business customers of BIUD have opportunities to upgrade to more efficient equipment where appropriate, the proposed DSM program will be incentivizing a number of other measures, which include:

Table 3.8 – Proposed Business HVAC and Water Heater Measures and Incentives				
Equipment	Rating	Proposed Rebate	Expected Quantity	Notes
Central Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥9	\$250 per ton	1	Seasonal Energy Efficiency Rating (SEER) measures air conditioning and heat pump cooling efficiency. A SEER rating is a maximum efficiency rating, similar to the miles per gallon for a car.  Heating Seasonal Performance Factor (HSPF) is used to measure the efficiency of heat pumps and the higher the HSPF the greater the energy efficiency.
Ducted or Mixed Ducted Mini-Split Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥9	\$250 per ton	1	
Ductless Mini-Split Heat Pump	<b>SEER</b> ≥15; <b>HSPF</b> ≥10	\$150 per ton	0	
Heat Pump Water Heaters	ENERGY STAR ≤ 55 gallon; should have a minimum UEF of 2.00	\$300 rebate	0	Uniform Energy Factor (UEF) is a new metric for determining the energy efficiency of a water heater utilized by the Department of Energy. The higher the UEF, the higher the equipment's efficiency and the lower the energy bill
	ENERGY STAR >55 gallon should have a minimum UEF of 2.70	\$150 rebate	2	Uniform Energy Factor (UEF) is a new metric for determining the energy efficiency of a water heater utilized by the Department of Energy. The higher the UEF, the higher the equipment's efficiency and the lower the energy bill
Wi-Fi Thermostats		\$100 Rebate	5	
<i>Efficient Coolers</i>				<i>If included; otherwise reallocate toward heat pump budget?</i>
*Rebate not to exceed \$500 per customer for this program (excluding thermostats).				

## Coolers – Walk-in cooler efficiency measures

Wi-Fi Programmable Thermostats –Wi-Fi enabled programmable thermostats allow for better control of, and reduced operating costs from, heating and cooling systems. Programmable thermostats are a great piece of technology to help manage a business’s energy usage efficiently and conveniently. Also, because Block Island has smart meters installed across the island, increasing the number of devices that beneficially interact with those meters, now and in the future, maximizes the benefits of having them in place. For example, having lots of customers adopt Wi-Fi thermostats increases the savings potential if the Utility were to offer demand response programming in the future. BIUD is proposing a \$100 incentive to customers who purchase a qualifying Wi-Fi enabled thermostat, an incentive level that is comparable or better than other efficiency programs in Rhode Island. The Utility is proposing a higher incentive level for these devices because the deployment of this technology provides benefits to customers, aligns with Utility goals such as maximizing smart meter technology and innovation, as well as interacting favorably with the proposed emphasis on heating electrification. Also, business customers typically use more energy than residential customers and so measures that help lower their usage can lead to even larger savings amounts, both in dollars and energy.

Heat Pump Heating and Cooling, and Heat Pump Water Heaters: As in the residential program, the proposed DSM plan wants to incentivize business adoption of high-efficiency heat pump systems for heating and cooling, as well as heat pump water heaters. The electrification of heating is an important step in reducing greenhouse gas emissions and the recently proposed three-tier rate structure with an attractive winter electricity price makes the adoption of electric heating measures more cost effective for customers.

Customers who take advantage of incentives for approved business HVAC measures will be given their incentive in the form of a rebate payment after work has been completed and inspected, when required. Rebate forms are available to customers both online and in person at the BIUD office and will require customers fill them out, including address and utility account information, as well as including proper documentation in the form of a receipt or work order from the contractor who performed the job (Sample Rebate Forms included in Appendix D). Customers submitting rebates for eligible Wi-Fi thermostats need only provide a purchase receipt as proper documentation with their rebate form. If a customer has any problems or questions regarding a rebate form, their contractor may be able to help complete relevant fields at the completion of the job, and customers can always reach out to BIUD staff for assistance.

## **4. Program Administration and Management**

With the proposed DSM program for 2020, a structure has been designed to ensure successful program delivery and implementation, that customers are aware of the program and are receiving timely service and rebates, that reporting obligations are met, and that data is collected to inform future improvements to the program. To assist in these efforts the Utility proposes in this plan for a strong collaboration with the Office of Energy Resources and proposes to hire an efficiency consultant to help administer the program and oversee reporting.

i. Vendor Engagement

One of the critical elements to the success of the proposed DSM program is the engagement of knowledgeable and reliable vendors. BIUD will be soliciting one vendor to provide audits, direct install services and, if desired by the customer, weatherization measures to residential and business customers. The Utility will also be soliciting a separate vendor to provide post-installation inspections for business customers and all residential non-direct install (e.g. weatherization and HVAC) measures. BIUD will be going out to competitive RFP for the services of a lead audit vendor for the proposed DSM program as well as for inspection services (RFPs included in Appendix C).

The scope of work for these vendors has been designed to provide comprehensive scheduling, service, and recommendations to customers and to work alongside BIUD staff and the efficiency consultant the Utility proposes to hire in order to deliver efficient and effective service to customers, ensure proper deployment and installation of incentivized measures, and process invoices and rebates in a timely fashion.

ii. Program Management and Oversight

The Utility, recognizing the importance of robust oversight, data reporting, and program administration will ensure that Block Island Utility District staff will be trained and knowledgeable about the proposed program offerings and rebate process in order to effectively work with vendors, consultants, and customers in the delivery of the proposed DSM plan. BIUD has also proposed several means of securing additional resources to support its management and oversight of the proposed plan. The Utility plans to continue its ongoing engagement with the Office of Energy Resources in order to leverage lessons learned and best practices from *Block Island Saves*, as well as tapping into the diverse set of efficiency expertise that OER can provide. Additionally, the proposed DSM plan sets aside funding to hire an efficiency consultant to help manage the program and its implementation, including the processing of rebates, the collection of data, and reporting on program performance.

Block Island Utility District will make rebate forms, which include a listing of measure eligibility requirements, available both in person and online for customers to access. Once customers complete and submit rebate applications – either by mail or via email - the Utility will review them for accuracy and eligibility. All eligible applications received and reviewed will then be processed for payment to the customer, funds permitting, and customers should expect to receive their rebate in four to six weeks.

One key management point the Utility would like to highlight here is the importance of scheduling and efficiency to the cost-efficiency of the programs. Informed by the *Block Island Saves* pilot, the Utility is aware that vendor travel to/from Block Island is an added expense that needs to be accounted for. In order to maximize vendor trips to the Island then, BIUD is acutely aware that each visit should maximize the number of opportunities (audits, weatherization, HVAC installations, etc.) completed in a day. The Utility will therefore be working closely with

its selected vendors to ensure efficient scheduling of work in order to decrease the costs associated with excess or inefficient vendor travel to and from Block Island. The RFP the Utility will use to procure vendors is also explicit about the importance of scheduling efficiency and asks respondents to address their ability to effectively deliver services with this factor in mind.

iii. Customer Engagement

<b>Table 4.1 – Proposed Customer Outreach Channels and Budget Allocation</b>		
<u>Customer Outreach Sector</u>		
<b>Sector Total</b>	<b>\$4,500.00</b>	Outreach through Block Island Times, Bill Inserts, Facebook, and Community Bulletin

While the *Block Island Saves* pilot program was very successful, it will have concluded over two year prior to the implementation of this proposed DSM plan and so BIUD will need to strategically engage customers in order to promote the return of efficiency programming to Block Island. In order to ensure customers are aware of the program and its offerings, as well as provide them instructions on how to participate, BIUD will be promoting the DSM program through the following channels:

Bill inserts will be included with customer bills at four different times during the year to advertise the DSM program, provide information about how customers can participate, and highlight incentive opportunities.

Block Island Times is a widely circulated and widely read local newspaper on Block Island. BIUD will take out quarter page advertisements in the Block Island Times for multiple weeks during both peak and off-peak seasons in order to reach as many customers as possible. These advertisements will provide information on the program and have seasonal calls to action to encourage customer participation.

BIUD will also be utilizing several no-cost engagement channels, like the community bulletin and the Utility’s Facebook page to spread the word about the DSM program to customers throughout the year.

BIUD office staff will also be knowledgeable about the program, its offerings, and ways customers can engage with it in order to provide accurate information to customers coming into and/or calling the office with questions.

iv. Program Reporting

As was discussed in section 4.ii, *Program Management and Oversight*, BIUD proposes to hire an efficiency consultant to help oversee and manage the DSM program. In addition to helping oversee the program and assisting with its implementation, the efficiency consultant BIUD proposes to hire will assist the Utility with quarterly progress reports, as well as required reporting to the Public Utilities Commission. These quarterly reports will help inform a mid-year

and year-end report as well as provides guideposts for program performance throughout the year. The data that will be included in this reporting is as follows:

- Number of participants per sector (Residential vs. Business)
- Costs incurred to date and percent of yearly budget spent (by sector and overall program)
- Detailed accounting of what measures have been installed, both direct install and follow up measures incentivized by the DSM program
- Number of rebates processed, by measure type
- Number of inspections completed out of number of inspections required, and associated costs.
- kWh and delivered fuel (oil, propane) savings, both annual and lifetime, resulting from the program
- Peak demand reduction
- Other data as required, or as deemed necessary by the Utility

## **5. Conclusion**

The Block Island Utility District believes that the proposed DSM plan describes and establish an effective efficiency program that will provide considerable benefits to customers and the local grid through its implementation. The Utility feels that there are significant energy savings opportunities in New Shoreham, which will be more clearly enumerated in the forthcoming potential study being conducted for Rhode Island, and that this proposed plan has effective strategies to realize those savings. The plan provides opportunities for no-cost assessments and direct-install measures that all customers can access free of charge, as well as providing guidance and further incentives for deeper energy saving measures (e.g. weatherization, HVAC and water heating equipment, Wi-Fi thermostats).

The proposed 2020 DSM plan iterates on the *Block Island Saves* pilot program to provide additional emphasis on heating electrification opportunities, seeking to leverage not only the DSM plan incentives but also the proposed new rate structure to drive customer adoption. Additionally, through the weatherization bonus incentive, BIUD aims to drive additional customer investment in insulation alongside heat pump technology and feel that this is an innovative incentive mechanism that may also influence other jurisdictions if successful.

In sum, BIUD feels that this proposed DSM plan provides a strong foundation for efficiency programming on Block Island and is structured to deliver significant benefits to customers and the local grid.

Block Island Utility District respectfully requests that the Public Utilities Commission (PUC) approve the 2020 Demand Side Management plan in its entirety. Specifically, the Utility requests that the PUC approve the following:

- The proposed total budget amount and the program budgets contained therein

- The proposed programs and the associated incentives and measures contained within

**AGENDA ITEM 7**  
**RATE CASE UPDATE**



**BLOCK ISLAND UTILITY DISTRICT**  
**dba BLOCK ISLAND POWER COMPANY**  
**DOCKET 4985 – RATE CASE**

**SCHEDULE**

Rates go into Effect June 1, 2020

Efficiency surcharge would go into effect June 1, 2020

Standard Offer and Transmission Reconciliation pushed to June 1, 2020 to be efficient with hearings.

Jan 2020	Public Comment Hearing – Daytime on Mainland possible Narragansett
2/12/2020	Division and Intervenor Direct
3/25/2020	BIUD Rebuttal
Week of 4/6/2020	Public Comment on Island
4/22/2020	Division and Intervenor Surrebuttal or Settlement
5/5 – 5/7 2020	Hearings
End of May	Open Meeting – PUC Decision
6/1/2020	BIUD Effective Date
6/30/2020	Suspension Deadline

**AGENDA ITEM 8**  
**NET METERING**

## **BLOCK ISLAND UTILITY DISTRICT**

### **PROPOSED NET METERING POLICY**

The Utility District is considering raising the cap on the limit of net metered member owned generation; currently statutorily set at 3% of peak.

To achieve this outcome, several boundary conditions for the size, metering configuration and pricing regime must be established.

#### Boundary Conditions

- 1) The Net Metering ("NM") rate(s) be as financially neutral as possible; - i.e., as much as practical there should be no transfer of cost responsibility between traditional and energy producing customers;
- 2) Net metered customers will remain responsible for fixed costs which are not a function of power consumption or production on the island (non-bypassable charges);
- 3) The NM rate will be calibrated yearly with the standard offer and transmission cost filing;
- 4) The maximum size of an installation is limited to 15 kW;
- 5) A project larger than 15 kW will be considered after a technical/system impact review is conducted – which will be paid for by the applicant;
- 6) The program would be open to all rate/member classes;
- 7) The generation will be metered separately from the consumption meter;
- 8) The sale/retention of the Renewable Energy Credits (RECs) will initially be set at \$.01/kWh provided the customer transfers all RECs to the Utility District; The customer will have the option to keep the RECs for private sale or retirement in which case the Utility District payment will be reduced by \$.01/kWh;
- 9) All generation credits will be in the form of bill credits.

#### Cost/Payment Elements

- 1) The costs for power delivered/consumed by the member will be charged at the appropriate retail rate for the customer.
- 2) The payment (bill credit) for power received by the Utility District will be the standard offer price, the transmission price and any variable distribution costs netted by the directly assigned transmission costs, the connection/customer charge and the meter cost.
- 3) The connection charge consists of the fixed ISO costs and the ancillary services.
- 4) The customer charge consists of the customer service, accounting and billing costs as determined by the cost of service filed in Docket 4975 (Rate Case).

- 5) The meter charge consists of the annualized cost (divided by twelve) of the installed cost, operation and maintenance of the Utility District installed meter equipment.

The resulting net metering rate being proposed is:

NET METERING RATES		
Customer Charge	\$ 4.75	Note 1
Connection Charge	\$ 8.50	Note 2
Meter Charge	\$ 2.00	Note 3
Energy Payment	\$ 0.1390	Note 4
REC Payment	\$ 0.0100	Note 5

- Note 1) The customer charge is developed from the cost of service customer cost total as filed in Docket 4975.
- Note 2) The connection charge is based on current year National Grid fixed transformation costs.
- Note 3) The meter charge is for a 2<sup>nd</sup> meter at the current meter annual plant and O&M costs from the cost of service filed in Docket 4975.
- Note 4) The generation avoided cost is based on the current standard offer rate of \$0.0972/kWh. The avoided transmission cost is based on the current transmission rate of \$0.07/kWh less the fixed transmission cost of \$0.0272/kWh. The fixed cost is developed from the National Grid fixed charges of \$29,576/mo or \$357,576/yr divided by annual sales of 13,156,030 kWh (\$357,576/13,156,030 kWh = \$0.0272/kWh). The avoidable transmission cost is \$0.0428/kWh (= .07/kWh - .0272/kWh).
- Note 5) The REC payment is only given if the consumers REC's are transferred to the Utility District – the Utility District will reserve the right to sell the RECs.

Existing Net Metered Accounts – would remain on the existing net metering rate structure (grandfathered) – until which point their system is replaced, upgraded or retired.

### New Net Metering Example

- 1) Residential customer with a two-meter configuration and a 15 kW solar panel.
- 2) Load Meter: Residential Tariff Cost
- 3) Generation Meter: Standard Offer and Transmission cost payment (CREDIT) less connection, customer and meter charge.

Example: August

Load: 1000 kWh

Generation: 2000 kWh

CONSUMPTION METER			
	Usage	Rate	Cost
Customer Charge		\$ 10.00	\$ 10.00
Plant/Distribution Charge	1000	\$ 0.2850	\$ 285.00
Efficiency Charge	1000	\$ 0.0100	\$ 10.00
System Charge		\$ 25.00	\$ 25.00
Standard Offer Charge	1000	\$ 0.0972	\$ 97.20
Transmission Cost	1000	\$ 0.0700	\$ 70.00
<b>Total Charges</b>			<b>\$ 497.20</b>

GENERATION METER			
15kW SYSTEM			
	Generation	Rate	Cost
Customer Charge		\$ 4.75	\$ 4.75
Connection Charge		\$ 8.50	\$ 8.50
Meter Charge		\$ 2.00	\$ 2.00
Credit	2000	\$ 0.1390	\$ 278.00
REC Payment	2000	\$ 0.0100	\$ 20.00
<b>Total Net Bill Credit</b>			<b>\$ 282.75</b>

METER INSTALLATION DIAGRAM



**AGENDA ITEM 9**  
**2020 OPERATING AND CAPITAL BUDGETS**

**BLOCK ISLAND UTILITY DISTRICT  
2020 BUDGETS**

The 2020 budget is broken into three components; Revenues, Expenses and Capital. The 2020 Operating and Maintenance Budget is based on the 2018 test year and 2019 rate year data that was filed with the rate case.

2018 Test Year: The 2018 test year was the BIPCO budget/actuals from the calendar year 2018.

2019 Rate Year: The adjusted 2019 BIUD Rate Year was based on the BIPCO 2018 test year, adjustments were made to reflect the changes in taxes, debt service among other changes in expense budget line items such as capital, storm reserve, operating reserve, etc.

**Summary**

- 1) Revenues: For purposes of the rate case we projected flat sales. Adjustments were made within the different rate classes to reflect the impact of eliminating the Residential Demand, changing the System Charges to be equal between Residential and General.

Kilo-Watt Hour sales (YTD through the end of October) are essentially flat (up .003%) from 2018 to 2019.

- 2) Operating Expenses: The total operating expenses are flat from 2018 to 2019, but include the following new programs/line items:

Efficiency Program	\$60,000 NET
Operating Reserve	\$95,868
Voltage Conversion Operating Fund	\$62,441

- 3) Capital Budget: The capital budget is based on what was submitted with the rate case with the exceptions of those items listed that are highlighted yellow. The capital budget that has been submitted as part of the rate case will be funded with cash – PAY-GO which will help build equity.

The housing projects would be financed and pay for by offsetting rental income.

The spare transformer which would be owned by the Utility District would be also be financed and paid for with Standard Offer rates. The increase to this rate would be \$0.0025 which I estimate will be more than offset by the savings from the NYPA power supply contract.



**RATE YEAR REVENUE**  
**2020 BUDGET**  
**BLOCK ISLAND UTILITY DISTRICT**

ACCT. #	BUDGET ACCOUNT DESCRIPTION	ADJUSTED TEST YEAR	RATE YEAR ADJUSTMENTS	ADJUSTED RATE YEAR
<b>REVENUE</b>				
<i>Operating Revenue---Rate Revenue</i>				
440-001	Residential-Plant/Distribution Charge	\$ 658,024	1 260,819	\$ 918,843
442-101	Commercial-Plant/Distribution Charge	255,806	1 17,149	272,955
442-201	Demand Customers-Plant/Distribution Charge	1,157,135	1 (111,422)	1,045,713
444-001	Public Authority-Plant/Distribution Charge	147,006	1 (147,006)	(0)
445-000	Street Lighting	6,985		6,985
456-001	Customer Charge- All Rate Classes	312,867	2 (9,582)	303,285
456-002	Demand - All Rate Classes	408,898	3 (123,030)	285,868
456-004	System Charge- All Rate Classes	82,867	4 11,615	94,482
<i>Total Operating Revenue---Electricity Charges by Customer Class</i>		3,029,588	(101,457)	2,928,131
<i>Operating Revenue---Pass Through</i>				
440-002	Residential Fuel Adjustment	19,796	5 (19,796)	0
440-003	Residential Standard Offer	380,154	5 (380,154)	0
440-004	Residential Transmission Chrg	286,144	5 (286,144)	0
442-102	Commercial Fuel	6,328	5 (6,328)	0
442-103	Commercial Standard Offer	130,496	5 (130,496)	0
442-104	Commercial Transmission Chrg	96,737	5 (96,737)	0
442-202	Demand Fuel	38,219	5 (38,219)	0
442-203	Demand Standard Offer	600,385	5 (600,385)	0
442-204	Demand Transmission Chrg	430,364	5 (430,364)	0
444-002	Public Authority Fuel	4,503	5 (4,503)	0
444-003	Public Authority Standard Off	92,405	5 (92,405)	0
444-004	Public Auth. Transmission Chrg	70,020	5 (70,020)	0
<i>Total Operating Revenue---Pass Through</i>		2,155,550	(2,155,550)	0
<i>Other Revenue</i>				
419-000	Interest Income	920	TY	920
421-002	Miscellaneous Income	1,418	TY	1,418
421-004	Pole Accidents	564	TY	564
421-007	Biller Penalty	21,378	TY	21,378
421-012	Forgiveness on CAT Debt	(0)	TY	(0)
421-013	(Gain) on Sale of Asset	(0)	TY	(0)
421-014	Gain on Insurance Proceeds	0	TY	0
451-002	Connection Charge	925	TY	925
	Efficiency grant		6 60,000	60,000
456-006	Rent - Lease	260,000	TY	260,000
456-007	Rent -Office Apartment	18,000	TY	18,000
<i>Total Other Revenue</i>		303,204	60,000	363,204
<b>TOTAL REVENUE</b>		\$ 5,488,343	\$ (2,197,007)	\$ 3,291,336

**RATE YEAR EXPENDITURES**  
**2019 BUDGET**  
**BLOCK ISLAND UTILITY DISTRICT**

ACCT. #	BUDGET ACCOUNT DESCRIPTION	2018 BUDGET	ADJUSTMENTS	2019 BUDGET
<b>EXPENSES</b>				
<i>Power Production/Purchase-Pass thru Expenses</i>				
408-062	Gross Receipts Tax-Fuel Portion	\$ 83,898	1 \$ (83,898)	\$ -
547-101	Fuel	0	1 0	0
547-102	Purch.Power-SO-Energy	559,940	1 (559,940)	0
547-103	Purch.Power-SO-ISO	342,938	1 (342,938)	0
547-104	Purch.Power-SO-ENE	68,109	1 (68,109)	0
547-105	Purch.Power-SO-BIPCo Other	57,247	1 (57,247)	0
547-106	Purch.Power-TC-ISO	257,463	1 (257,463)	0
547-107	Purch.Power-TC-NGrid	533,828	1 (533,828)	0
547-109	Urea Expense	0	1 0	0
548-102	Fuel Procurement	1,085	1 (1,085)	0
548-104	Fuel Procurement-Assoc Comp	0	1 0	0
	Deferred Revenue	182,197	1 (182,197)	0
550-101	Engine rental & Assoc. (FAC)	0	1 0	0
553-225	DSI Surcharge funding	68,846	1 (68,846)	0
<i>Total Power Production/Purchase-Pass thru Expenses</i>		2,155,552	(2,155,552)	0
<i>Operating Expense---Power Production</i>				
546-100	Supervision P/R Only	0	2 0	0
548-101	Fuel Procurement P/R Only	0	2 0	0
549-101	Watchman P/R Only	0	2 0	0
549-103	Inside Maint. P/R Only	74,860	2 32,259	107,119
549-108	Maint Station Equip. P/R Only	67,355	2 29,025	96,380
549-102	Freight	3,190	TY 0	3,190
548-103	Lubrication	21,274	3 (11,274)	10,000
549-109	Miscellaneous	406	TY 0	406
549-111	Uniforms	6,074	TY 0	6,074
555-100	Purchased Power	0	TY 0	0
<i>Total Operating Expense---Power Production</i>		173,160	50,010	223,170
<i>Operating Expense---Distribution</i>				
580-100	Supervision - P/R Only	0	2 0	0
583-101	Overhead Lines - P/R Only	148,996	2 57,985	206,981
583-102	Overhead Lines	11,415	TY 0	11,415
584-102	Underground Lines	0	TY 0	0
586-101	Meters - P/R Only	4,695	2 1,827	6,522
586-102	Meters-Maintenance	8,210	TY 0	8,210
586-103	Meters-Data Services	24,658	TY 0	24,658
587-100	Customers Install P/R Only	0	2 0	0
588-101	St Lights & Sign P/R Only	0	2 0	0
588-102	Misc Distrib. P/R Only	0	2 0	0
588-103	Misc Distrib. Expense	43,060	TY 0	43,060
589-100	Lease - Motor Vehicle	35,426	4 6,000	41,426
<i>Total Operating Expense---Distribution</i>		276,459	65,812	342,271

**RATE YEAR EXPENDITURES**  
**2019 BUDGET**  
**BLOCK ISLAND UTILITY DISTRICT**

ACCT. #	BUDGET ACCOUNT DESCRIPTION	2018 BUDGET	ADJUSTMENTS	2019 BUDGET
<i>Operating Expense---Customer Service</i>				
902-000	Meter Reading - P/R Only	643	2 (643)	0
903-000	Rec & Collection - P/R Only	49,023	2 5,631	54,653
916-001	Education and Training	12,101	TY 0	12,101
<i>Total Operating Expense---Customer Service</i>		61,767	4,987	66,754
<i>Operating Expense---Administrative</i>				
920-001	Office Salaries - P/R Only	13,166	2 1,512	14,678
920-003	Accrued Vacation	5,610	TY 0	5,610
920-004	Vacation Pay - P/R Only	34,814	2 (34,814)	0
920-005	Holiday Pay - P/R only	12,032	2 (12,032)	0
920-006	Holiday Not Worked - P/R Only	4,790	2 (4,790)	0
920-007	Sick Leave Pay - P/R Only	8,405	2 (8,405)	0
920-008	Personal Pay - P/R Only	4,357	2 (4,357)	0
920-009	President's Compensation	0	2 157,597	157,597
920-010	CFO Compensation	0	2 0	0
920-011	COO Compensation	0	2 0	0
920-012	Admin & Management - PR Only	152,481	2 (152,481)	0
926-004	Bonus - P/R Only	10,027	2 (10,027)	0
921-001	Office supplies and Expense	36,449	TY 0	36,449
921-002	Directors Meetings	0	TY 0	0
921-004	Trash Removal	5,785	TY 0	5,785
921-005	Plant Expense	12,771	TY 0	12,771
921-006	Utilities Expense	13,008	TY 0	13,008
921-007	Telephone Expense	30,240	TY 0	30,240
923-000	O/S-Outside Services	7,239	TY 0	7,239
923-005	O/S-Payroll Processing	4,583	TY 0	4,583
923-006	O/S-General Regulatory Accounting	26,430	TY 0	26,430
923-013	O/S-General Regulatory Legal	33,986	TY 0	33,986
923-009	Legal & Accounting Rate Case	0	TY 0	0
923-012	O/S-Legal-General	71,000	5 (35,500)	35,500
923-019	Accounting	37,027	TY 0	37,027
923-020	Accounting-Audit	30,580	TY 0	30,580
923-022	Accounting-Bookkeeping	30,281	TY 0	30,281
923-024	Accounting-Taxes	5,213	6 (5,213)	0
923-025	Board Clerk	0	7 7,200	7,200
924-000	General Liability Ins	185,000	TY 0	185,000
926-001	Employee Pension	91,500	TY 0	91,500
926-002	Travel And Misc. Expense	5,345	TY 0	5,345
926-003	Employee Benefits	83,196	8 11,775	94,971
926-005	Wellness Program	0	TY 0	0
926-006	Benefits-coshare	(11,845)	9 (4,835)	(16,680)
926-007	Health Ins-Deductible Payable	3,913	TY 0	3,913
928-001	Reg Comm Exp	29,954	TY 0	29,954
928-002	Rate Case Expense	0	10 50,000	50,000
930-020	Employer 401k contribution	21,708	11 1,513	23,220
930-021	Bad Debt	(0)	TY 0	(0)

**RATE YEAR EXPENDITURES**  
**2019 BUDGET**  
**BLOCK ISLAND UTILITY DISTRICT**

ACCT. #	BUDGET ACCOUNT DESCRIPTION	2018 BUDGET	ADJUSTMENTS	2019 BUDGET
930-023	Management Fee Bonus	0	TY 0	0
930-025	Environmental	53,824	TY 0	53,824
	<i>(Operating Expense---Administrative Continued)</i>			0
930-029	Web Design	0	TY 0	0
931-000	Software & Billing Service	16,323	12 41,497	57,820
<i>Total Operating Expense---Administrative</i>		1,069,188	(1,359)	1,067,829
<i>Maintenance Expense---Power Production</i>				
551-201	Supervision - P/R Only	3,252	2 (3,252)	0
553-203	Maintenance Of Struct P/R Only	6,528	2 (6,528)	0
551-202	Maint. Of Gen & Elect Plt	8,568	TY 0	8,568
553-201	Small Tools	6,383	TY 0	6,383
553-202	Tank Testing & Fuel Maint	0	13 25,000	25,000
553-204	Maint. Of Structures	4,718	TY 0	4,718
553-206	Maint General Plant	9,762	TY 0	9,762
553-207	Tank Replacement	0	TY 0	0
553-209	General Maintenance	6,464	TY 0	6,464
549-113	SCR Maint	0	TY 0	0
549-114	SCR & Engine Maint Res.Exp.	230,000	14 (140,000)	90,000
553-200	Major Engine Maintenance	2,405	TY 0	2,405
553-213	General Engine Maintenance	5,856	TY 0	5,856
553-219	Engine Testing	0	TY 0	0
553-220	Engine Rental (Non FAC)	0	TY 0	0
553-221	Haz. Waste Store/Remove/Hd	5,210	TY 0	5,210
553-222	Cellular Tower Maint & Expense	9,328	TY 0	9,328
554-203	Misc.	1,006	TY 0	1,006
<i>nance Expense---Power Production</i>		299,480	(124,780)	174,700
<i>Maintenance Expense---Distribution System</i>				
590-200	Supervision - P/R Only	0	2 0	0
593-202	Overhead Lines - P/R Only	93,641	2 36,442	130,083
593-205	Fire Damage Repairs-PR	2,661	2 (2,661)	0
593-207	Storm Damage Repairs-PR	0	2 0	0
595-202	Underground - P/R Only	0	2 0	0
598-201	Meters - P/R Only	0	2 0	0
592-200	Station Equip	0	TY 0	0
549-104	Truck Repair	26,546	TY 0	26,546
549-105	Supplies	20,663	TY 0	20,663
593-203	Tree Trimming	76,494	15 43,506	120,000
593-204	Fire Damage Repairs	(0)	TY 0	(0)
593-206	Storm Damage Repairs	55,978	TY 0	55,978
595-201	Transformer Expense	0	TY 0	0
596-202	Maint Of Street Lights	0	TY 0	0
596-203	Misc	0	TY 0	0
554-201	Gasoline	10,125	TY 0	10,125
598-202	Backhoe/Tractor Repair	0	TY 0	0
<i>Total Maintenance Expense---Distribution System</i>		286,108	77,287	363,395

**RATE YEAR EXPENDITURES**  
**2019 BUDGET**  
**BLOCK ISLAND UTILITY DISTRICT**

ACCT. #	BUDGET ACCOUNT DESCRIPTION	2018 BUDGET	ADJUSTMENTS	2019 BUDGET
<i>Taxes</i>				
408-010	Property Taxes	16,136	16 (16,136)	0
408-030	Payroll Taxes	63,809	17 (4,267)	59,543
	( Taxes Continued)			0
408-050	RI Sales Tax	9,740	16 (9,740)	(0)
408-061	RI Gross Earnings Tax	135,138	16 (135,138)	(0)
408-071	Registrations	841	TY	841
409-010	Federal Income Tax	171,707	16 (171,707)	(0)
410-010	Net Change In Deferred Tx	0		0
<i>Total Taxes</i>		397,370	(336,988)	60,383
<i>Depreciation</i>				
	Depreciation	0	TY 0	0
<i>Total Depreciation</i>				
<i>Other Deductions</i>				
426-052	Advertising	274	TY 0	274
426-054	Misc other expenses	112	TY 0	112
426-056	Bank Service Fees	2,142	TY 0	2,142
426-057	Finance Charges	147	TY 0	147
	Efficiency Program	0	18 120,000	120,000
<i>Total Other Deductions</i>		2,676	120,000	122,676
<i>Debt Service and Capital Expenditures</i>				
427-001	Interest on RUS Loan	106,222	19 (106,222)	(0)
427-002	Interest on Engine 26 Loan	0	TY 0	0
427-003	Interest - Other	14,476	TY 0	14,476
427-004	AIC Interest	0	TY 0	0
	Interest on CFC Loan		20 184,455	184,455
	Principal Paid on CFC Loan	202,425	20 (89,361)	113,064
				0
	Capitalized Labor	158,540	2 (158,540)	0
	Net Operating Reserve	0	21 95,868	95,868
	Voltage Conversion Capital Fund	0	22 62,441	62,441
	Capital Fund-Inventory Purchased & Used	93,000	23 0	93,000
	Capital Fund-Capitalized Expenditures	20,000	23 287,000	307,000
<i>Total Debt Service and Capital Expenditures</i>		594,662	275,641	870,304
<b>TOTAL EXPENSES</b>		5,316,423	(2,024,941)	3,291,482

(Excludes Voltage Conversion Engineering and Construction)

(Funded by Standard Offer - Debt Service = \$0.0025 / KWH)

**AGENDA ITEM 10**  
**EEI MASTER FOR BP POWER SUPPLY RFP**

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# Master Power Purchase & Sale Agreement

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# MASTER POWER PURCHASE AND SALES AGREEMENT

## TABLE OF CONTENTS

COVER SHEET.....	1
GENERAL TERMS AND CONDITIONS .....	6
ARTICLE ONE: GENERAL DEFINITIONS .....	6
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.....	11
2.1 Transactions .....	11
2.2 Governing Terms.....	11
2.3 Confirmation.....	11
2.4 Additional Confirmation Terms.....	12
2.5 Recording .....	12
ARTICLE THREE: OBLIGATIONS AND DELIVERIES .....	12
3.1 Seller's and Buyer's Obligations.....	12
3.2 Transmission and Scheduling.....	12
3.3 Force Majeure .....	13
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE.....	13
4.1 Seller Failure.....	13
4.2 Buyer Failure.....	13
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES .....	13
5.1 Events of Default.....	13
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	15
5.3 Net Out of Settlement Amounts.....	15
5.4 Notice of Payment of Termination Payment.....	15
5.5 Disputes With Respect to Termination Payment .....	15
5.6 Closeout Setoffs .....	16
5.7 Suspension of Performance.....	16
ARTICLE SIX: PAYMENT AND NETTING.....	16
6.1 Billing Period .....	16
6.2 Timeliness of Payment.....	17
6.3 Disputes and Adjustments of Invoices.....	17
6.4 Netting of Payments.....	17
6.5 Payment Obligation Absent Netting.....	17
6.6 Security.....	18
6.7 Payment for Options.....	18
6.8 Transaction Netting.....	18

ARTICLE SEVEN: LIMITATIONS.....	18
7.1 Limitation of Remedies, Liability and Damages .....	18
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.....	19
8.1 Party A Credit Protection.....	19
8.2 Party B Credit Protection.....	21
8.3 Grant of Security Interest/Remedies .....	22
ARTICLE NINE: GOVERNMENTAL CHARGES .....	23
9.1 Cooperation.....	23
9.2 Governmental Charges.....	23
ARTICLE TEN: MISCELLANEOUS.....	23
10.1 Term of Master Agreement.....	23
10.2 Representations and Warranties.....	23
10.3 Title and Risk of Loss .....	25
10.4 Indemnity.....	25
10.5 Assignment .....	25
10.6 Governing Law.....	25
10.7 Notices.....	26
10.8 General.....	26
10.9 Audit.....	26
10.10 Forward Contract.....	27
10.11 Confidentiality.....	27
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS.....	28
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	32
EXHIBIT A: CONFIRMATION LETTER .....	39

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement" ) is made as of the following date: \_\_\_\_\_ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("\_\_\_\_\_ " or "Party A")

All Notices:

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

### **Invoices:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Scheduling:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Payments:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Wire Transfer:**

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

### **Credit and Collections:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Name ("Counterparty" or "Party B")

All Notices:

Street: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Attn: Contract Administration

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

### **Invoices:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Scheduling:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Payments:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

### **Wire Transfer:**

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

### **Credit and Collections:**

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_ Dated \_\_\_\_\_ Docket Number \_\_\_\_\_

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**Article Two**

Transaction Terms and Conditions      ☐ Optional provision in Section 2.4. If not checked, inapplicable.

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**Article Four**

Remedies for Failure to Deliver or Receive      ☐ Accelerated Payment of Damages. If not checked, inapplicable.

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**Article Five**

Events of Default; Remedies      ☐ Cross Default for Party A:  
☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Cross Default for Party B:  
☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_  
☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

- ☐ Option A (Applicable if no other selection is made.)  
☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_  
☐ Option C (No Setoff)

---

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☐ Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

- ☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

## 8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
- ☐ Option B Specify: \_\_\_\_\_
- ☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

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**Article 10**

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

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**Schedule M**

- ☐ Party A is a Governmental Entity or Public Power System
- ☐ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable
- ☐ Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.



1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

#### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

#### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;



- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

### **ARTICLE SIX: PAYMENT AND NETTING**

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

## **ARTICLE SEVEN: LIMITATIONS**

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

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS**

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding



Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

## **ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## SCHEDULE M

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

- A. The Parties agree to add the following definitions in Article One.

“Act” means \_\_\_\_\_.<sup>1</sup>

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

- B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

- C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

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<sup>1</sup> Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].



G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF \_\_\_\_\_<sup>2</sup> SHALL APPLY.

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<sup>2</sup> Insert relevant state for Governmental Entity or Public Power System.

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.



**EXHIBIT A**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_\_\_  
between \_\_\_\_\_ (“Party A”) and \_\_\_\_\_ (“Party B”)  
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

- ☐ Into \_\_\_\_\_, Seller’s Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm  
(Specify System: \_\_\_\_\_)
- ☐ Unit Firm  
(Specify Unit(s): \_\_\_\_\_)
- ☐ Other \_\_\_\_\_
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- |   |                                 |                                |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency   | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency  | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent        | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency |                                 |                                |
- (Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

Other Charges: \_\_\_\_\_

Confirmation Letter  
Page 2

Delivery Period: \_\_\_\_\_  
Special Conditions: \_\_\_\_\_  
Scheduling: \_\_\_\_\_  
Option Buyer: \_\_\_\_\_  
Option Seller: \_\_\_\_\_  
Type of Option: \_\_\_\_\_  
Strike Price: \_\_\_\_\_  
Premium: \_\_\_\_\_  
Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone No: \_\_\_\_\_  
Fax: \_\_\_\_\_

**AGENDA ITEM 11**  
**DRAFT CONFLICT OF INTEREST POLICY**

## DRAFT CONFLICT OF INTEREST POLICY V2.1

### BLOCK ISLAND UTILITY DISTRICT

#### BOARD OF COMMISSIONERS

#### SECTION I -AUTHORITY

Under the authority granted by the Block Island Utility District Act of 2017 (the Act), the Board of Commissioners (the Board) of the Block Island Utility District (BIUD or the District) adopts the following Conflict of Interest Policy (COI). This policy supplements the Rhode Island Code of Ethics in Government and Regulations.

The Block Island Utility District is a quasi-municipal corporation with a five (5) member Board of Commissioners who are elected by the ratepayers to four-year terms and a President hired by the Board with authority to act on behalf of BIUD. The Board of Commissioners has the responsibility to execute the powers of the BIUD by the Act. All commissioners are qualified electors of the District, and all commissioners, corporate officers, and employees are subject to the Rhode Island Code of Ethics in Government and Regulations.

#### SECTION II – PURPOSE

The purpose of the Conflict of Interest Policy is to ensure that the Block Island Utility District provides consistent guidelines for its operations, including guidance for ethics and behavior of the Board of Commissioners, BIUD corporate officers, and employees as they fulfill their duties. The Conflict of Interest Policy, when followed, is intended to support the credibility of the District by providing that no individual interests of any Commissioner, officer, or employee compromise the interests of the District.

#### SECTION III – DEFINITIONS

1. “Associates” are any member of a Board member, officer or employee’s family, household, business, or business associates.
2. “Board” is the Board of Commissioners elected by the membership.
3. “Corporate officer” is the President and other high-level management officials of the BIUD and subject to the policies and procedures established by the Board and subject to [RI Gen Law § 36-14-4 \(2013\)](#) the RI Code of Ethics.
4. “District” means the Block Island Utility District, a quasi-municipal corporation having a distinct existence from the State of Rhode Island and empowered by the Act serving residential, commercial, and industrial accounts on Block Island.
5. “President” is the President, CEO, or Director of the BIUD who oversees the daily operation of the BIUD and reports to the Board of Commissioners. The President is subject to the same prohibitions and disclosures as the Commissioners in matters considered by the Board.

#### SECTION IV- FINANCIAL INTERESTS

- A. Board members shall not receive compensation for attending scheduled and special meetings or any other meetings they attend in their capacity as Commissioner.
- B. No member of the Board of Commissioners shall directly or indirectly benefit from any contract or agreement to supply anything of value or receive anything of value from the District. In the case of contracting for with the District, this provision may be waived by a vote of four (4) Board of Utility Commissioners if, before any action, the Board has fully disclosed the details and obtained an opinion of the Attorney General or the Rhode Island Ethics Commission.
- C. Contracts with the District are awarded through an open and public competitive bidding process. Contracts for professional services, which traditionally do not go through competitive bidding, are awarded through a process of public notice and disclosure.
- D. Commissioners and corporate officers will not engage in financial transactions with subordinates outside the course of regular commercial business.
- E. A Commissioner or corporate officer may not directly or indirectly represent, appear, or negotiate in a private capacity for any person or organization on a matter that is pending before the Board of Commissioners. This provision applies for one year following the end of their service. In cases of hardship, individuals may apply for a waiver provided that it is (1) approved by the Ethics Commission, (2) the BIUD Board of Commissioners is informed in writing of the interest in the matter, (3) the individual recuses themselves from voting on or participating in the matter, and (4) the individual and the Board follows any other recommendations the Ethics Commission may make to avoid any appearance of impropriety in the matter.
- F. No Commissioner will accept employment with the District during their term and for one year after their service terminates.

## SECTION V- GIFTS

- A. A Commissioner or corporate officer will not accept individual gifts or other offerings valued over \$25 and not more than \$75 a year from each interested person ( this could just say don't accept gifts); a Commissioner may accept donations made to BIUD and the Board if those donations are disclosed and belong to the District.
- B. No candidate for the Board, a person subject to this policy, or their associates may receive, solicit or accept any gift, loan, political contribution, reward, or promise of future employment based on any understanding or expectation to influence the vote, official action, or judgment of the person.
- C. No person subject to this policy may use BIUD resources that are not available to the general membership, such as staff time, equipment, supplies, or facilities for private gain or personal purposes.

## SECTION VI - CONFIDENTIALITY

- A. No person subject to this policy will disclose confidential information acquired in the course of their official duties or employment or use any information for financial gain.
- B. Persons subject to this policy may not accept other employment that influences their employment with the District or requires them to disclose confidential information acquired by them while serving or working for the District.

- C. No person subject to this policy shall use their position or confidential information received through their position to obtain financial gain.

## SECTION VII – GENERAL CONDUCT

- A. Board members do not act in any way that would discredit or compromise the well-being and integrity of the District and will represent the membership of the District.
- B. The Board makes requests for assistance from, gives instructions to, and directs the President or Clerk and not the staff of the District.
- C. Board members work together for the benefit of the membership by being respectful of each other's opinions, striving for consensus, and honoring the majority vote.
- D. No person subject to this policy directly or indirectly threatens any person or their family members in any proceeding before the Board of Commissioners.
- E. Board members and officers avoid the appearance of impropriety in all their actions, and they do not withhold information that may indicate they have a conflict of interest on a matter before the Board.

## SECTION VIII – NEPOTISM

- A. (it may be more clear to break out the relevant material on associates here)

## SECTION IX – DUTY TO DISCLOSURE

- A. Any reasonably foreseeable real or perceived potential **substantial** conflict of interest must be disclosed by stating the scope and nature of the conflict of interest, and this disclosure is recorded in the minutes.
- B. If the Commissioner or corporate officer has reason to believe that they can still act objectively and in the interest of the District they may, disclose the nature of the potential conflict, and why they believe they can act impartially and objectively. This disclosure will be recorded at an open meeting on the matter, unless prohibited by law. (this exception may only be for a member of a legislative body)

## SECTION X – RECUSAL

- A. A Commissioner or corporate officer shall recuse themselves from and not participate in any BIUD action in which they, or their associates, have an interest that is in **substantial conflict with the discharge of their duties**. Unless the Board of Commissioners determines that a genuine emergency exists and that actions could not take place due to the recusal, in which case, the person shall disclose in writing the potential conflict of interest.
- B. Board members will recuse themselves when they have a conflict of interests and take no further action on the matter. A **substantial conflict of interest directly benefits or brings financial harm** to the individual, or their associates, and the interest is higher than any other general member or significant and definable group of persons or occupations.
- C. Any person may request that a Commissioner or corporate officer recuse themselves due to a potential conflict of interest. The request shall not constitute a requirement to recuse.

- D. If recused, a Commissioner or corporate officer shall not sit with the Board, deliberate with the Board, or participate in the proceedings on the matter as a member.
- E. If a previously unknown conflict is discovered, the Board may take evidence and, if needed, adjourn to act on the conflict.
- F. If after a recusal, it is not possible to act on a matter due to the lack of a decision making a quorum, the Board may reconvene the matter when absent members are present. In no case shall recusal permanently deprive the Board of Commissions of achieving a quorum to take official action.
- G. The Board Chair shall have the authority to order a Commissioner or corporate officer to recuse him or herself from a matter. A majority vote of the Board of Commissioners may override the Chair's order of recusal.

#### SECTION XI – ENFORCEMENT

In cases where conflict of interest procedures for disclosure and recusal have not been followed, the Board of Commissioners may act to discipline the offender in the following way:

- A. The Chair shall meet informally, and privately, with the Commissioner or corporate officer to discuss the possible violation, employees of the Utility will meet privately with the President or their designee, unless not in keeping with the collective bargaining agreement, in which cases the agreement shall be followed.
- B. The Board, or designated committee, may meet with the offending member to discuss their conduct. The individual may request that the meeting is held in closed session following the Open Meetings Act, unless not in keeping with the collective bargaining agreement, in which cases the agreement shall be followed.
- C. The Board shall decide if further action is warranted, and if so, the Board may issue a one-time warning. If another violation were to occur, the individual might be discharged, and the Board may suspend, terminate employment, or remove them from any BIUD position. The individual will have the right to respond to any proposed action before the action is taken.
- D. Nothing in this section shall override any collective bargaining agreement.

#### SECTION XII – FURTHER EXCEPTIONS

- A. The prohibitions in this policy do not prevent any individual from publicly expressing his or her viewpoints in a public forum, unless otherwise explicitly prohibited by this policy.

#### SECTION XIII – EFFECTIVE DATE

This Conflict of Interest Policy shall become effective immediately upon its adoption by the Block Island Utility District Board of Commissioners.

Date \_\_\_\_\_

ATTACHMENT I

BLOCK ISLAND UTILITY DISTRICT

CONFLICT OF INTEREST POLICY

BOARD OF COMMISSIONERS AND EXECUTIVE CORPORATE OFFICERS

ACKNOWLEDGMENT

The undersigned member of the BIUD Board of Commissions and Executive Corporate officers covered by this policy hereby acknowledges that he/she has received a copy of the Conflict of Interest Policy and that they understand they are bound by the policies and procedures describe in this Policy.

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Date \_\_\_\_\_

Please return to

BIUD Board Clerk  
PO Box 518  
Block Island, RI 02807



## ATTACHMENT II

### SELECTED DEFINITIONS FROM THE CODE OF ETHICS FOR REFERENCE DURING THE DRAFTING OF THIS POLICY

1. "Business" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust or any other entity recognized in law through which business for profit or not for profit is conducted;
2. "Business associate" means a person joined with another person to achieve a common financial objective;
3. "Cash value interest" means an ownership interest or a financial interest, an investment such as bonds, notes, debentures, mortgages and similar business investment interests. Deposits in any financial institution, savings and checking accounts, shares in a credit union or a cooperative bank, life insurance policies and annuities are not included.
4. "Conflict of interest" as defined by the RI Attorney General or the RI Ethics Commission, is any perceived conflict between the interests of the Block Island Utility District and an individual elected or hired to act on behalf of the District.
5. "Dependent child" A person's natural child, adopted child, or stepchild is a dependent child if during a calendar year the person provides over fifty percent (50%) of the child's support during the year.
6. "Doing business" means engaging in a financial transaction, such as a loan, purchase, sale or other type of transfer or exchange of money, goods, other property, or services for value. Doing business does not include the retail purchase of consumer goods bought primarily for personal, family or household purposes, and financial transactions of a personal nature, such as personal loans and individual insurance transactions.
7. "Employees" are any staff or contractor hired by the Board of Commissioners or the District. Employees of the Block Island Utility District are subject to RI Gen Law § 36-14-4 (2013) the RI Code of Ethics.
8. "Family member" means persons related by blood, adoption or marriage as in any of the following: spouse, dependent child, father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.
9. "Gifts" include any item of value but do not include nominal promotions such as calendars, pens/pencils, office-related materials or seasonal items made available to all corporate officers or the general public and not an individual person. Gifts are not 'give away' items at conferences that are made available to the general attendees.
10. "Household member" for the purposes of this policy, means any person who lives with or maintains a legal residence with the person subject to this policy.
11. "Income" means any money or thing of value received or to be received for future services whether in form of a fee, salary, expenses, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense that constitutes income under the Federal Internal Revenue Code.

12. "Ownership interest" means an interest in stock, assets, net profits, or losses of a business. The value of an ownership interest is determined at its highest fair market value in the calendar year.
13. "Reasonably Foreseeable" are potential conflicts that an individual has reason to believe or expect will result in financial benefit or detriment to themselves, their family, household members, employer, business, or business associates and are more than just conceivable, they need not be certain to be subject to disclosure and or disqualification.
14. "Represents" means the person participates in the presentation of evidence or arguments before the Board of Commissioners for the purpose of influencing the of the Board in his or her own favor.
15. "Substantial conflict" is when it is reasonable to anticipate that an individual, their family, household member, business or business associates, will realize a direct financial gain or loss as a result of fulfilling their duties and activities for the District.
16. "Subordinate" means any employee, contractor, or consultant whom is subject to the supervisory decisions of a person subject to this policy.

**AGENDA ITEM 12**  
**PROPOSED 2020 MEETING CALENDAR**

# BLOCK ISLAND UTILITY DISTRICT PROPOSED MEETING CALANDAR

2020

January						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

April						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July						
Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

October						
Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

May						
Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August						
Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November						
Su	Mo	Tu	We	Th	Fr	Sa
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8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

March						
Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

September						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December						
Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

REGULAR MONTHLY MEETING

ANNUAL MEMBERSHIP MEETING

**AGENDA ITEM 13**  
**LITIGATION**