

Proposal Concerning Modifications to LIPA's Tariff for Electric Service

Requested Action:

The Long Island Power Authority ("LIPA") staff proposes revisions to the LIPA Tariff for Electric Service to authorize the purchase of an additional 20 MW of renewable resources other than solar photovoltaic ("PV") from customers for a fixed term of 10 years at a fixed price for the entire term. The proposed purchase offer would be included under Service Classification No. 11 – Buy-Back Service.

Proposal:

On October 25, 2012, the Trustees, in their resolution regarding the Generation and Transmission Request for Proposals, also authorized staff to purchase up to an additional 100 MW of solar photovoltaic ("PV") generation under LIPA's *Clean Solar Initiative* Feed-in Tariff and an additional 20 MW of renewable generation other than solar PV. The 100 MW *Clean Solar Initiative II* feed-in tariff was approved by the Trustees on October 3, 2013. Staff is now proposing a *Clean Renewable Energy Initiative* feed-in tariff for renewable resources other than solar PV, using essentially the same structure as the *Clean Solar Initiative II* feed-in tariff.

This proposal for renewable resources other than solar PV differs from the *Clean Solar Initiative II* feed-in tariff in only a few limited ways:

1. Renewable technologies are defined as technologies eligible for the Renewable Portfolio Standard established by the New York Public Service Commission as of August 29, 2014. At this time, these technologies are Landfill Gas, Wind, Biomass, Hydroelectric, Fuel Cells, Anaerobic Digestion, Tidal Energy, Wave Energy, Ocean Thermal, Ethanol, Methanol, and Biodiesel. Solar photovoltaic generation, which is eligible for the Renewable Portfolio Standard, is explicitly excluded as 150 MW of solar PV technology has already been authorized under the two previously approved *Clean Solar Initiative I* and *Clean Solar Initiative II* feed-in tariff tranches.
2. The term of the agreement is limited to 10 years. Given that some of the eligible technologies like fuel cells currently rely on methane, the price of which may be difficult to predict for 20 years, a shorter horizon is more suitable for the non-solar PV technologies. Also, the expected useful life of some of these alternative technologies like wind power and fuel cells is shorter than the 20 year useful life for solar PV generation.
3. LIPA reserves the right to reject any bids that exceed the clearing price from the solar-PV auction (the results of which will be known in March of 2014).
4. No financial premium is proposed for any generation located in the LIPA service territory on the South Fork, east of the Shinnecock Canal.

5. The standard Power Purchase Agreement (“PPA”) used for the *Clean Solar Initiative II* has been modified for the *Clean Renewable Energy Initiative* solely to reflect the different type of generation resource and the shorter proposed term.

Background On Feed-in Tariffs:

The term “Feed-in Tariff” has been adopted throughout the industry to describe an offer to purchase a specific type of renewable generation from willing developers at a fixed price per kWh for a fixed period of time. LIPA’s Trustees have previously approved two feed-in tariffs for solar PV; the 50MW *Clean Solar Initiative I* and the 100MW *Clean Solar Initiative II*. Under this proposal for the *Clean Renewable Energy Initiative* feed-in tariff for renewable resources other than solar PV generation, the offer price would be established as a “market clearing price” that would apply to every developer that meets the criteria specified in the Tariff, up to the maximum level of enrollment (i.e., 20 MW).

Once a customer is enrolled under the *Clean Renewable Energy Initiative* feed-in tariff, that customer would receive the fixed price for 10 years pursuant to a non-negotiable, standard form Power Purchase Agreement (“PPA”), which, among other things, would memorialize the agreement with LIPA related to the terms of the Tariff. The PPA may assist the customer with obtaining financial resources for the project, since it would reflect a commitment on the part of LIPA to purchase the output of the facility for the fixed term at a fixed price. The currently approved PPA for solar PV generation through the *Clean Solar Initiative II* was slightly modified to reflect the few modifications reflected in this 20 MW Feed-in Tariff offering.

Customers who enroll in the *Clean Renewable Energy Initiative* feed-in tariff must sell 100% of the output from their eligible generation directly to LIPA. Each customer site must offer between 100 kW and 2,000 kW of generation from eligible renewable resources other than solar PV to participate. Interconnection must be at distribution voltage of 13.2 kV or less. A separate meter will be installed to measure the output directly at the generator. None of the output of the eligible generation would be available to serve the customer’s own load. By definition, a customer that participates in the *Clean Renewable Energy Initiative* feed-in tariff cannot participate in net metering. Similarly, a customer that has received a rebate for its renewable generation from LIPA or received other funding from LIPA (such as a research and development grant) may not participate in the *Clean Renewable Energy Initiative* feed-in tariff, and conversely, a customer that has enrolled in the *Clean Renewable Energy Initiative* feed-in tariff may not receive a renewable generation rebate or any other renewable resource funding from LIPA.

The Feed-in Tariff will be administered by PSEG-LI, LIPA’s service provider as of January 1, 2014. PSEG-LI will be responsible for accepting applications, evaluating locations for interconnection, notifying successful bidders, signing the PPA with the customer, reading the meters and preparing invoices for payment to the renewable resource generators, and handling all customer service issues associated with the Feed-In Tariff.

Benefits of a Feed-in Tariff

The Feed-in Tariff structure has been previously adopted by LIPA and in several States including Vermont, California, Florida and Hawaii, as well as abroad. The Feed-in Tariff pricing structure gives greater certainty to the renewable resource owners who require a steady stream of revenue to support their fixed investment. It also provides advantages to LIPA in that LIPA would only pay for renewable generation that is actually delivered by the participant over the ten year term of the PPA, as that generation is produced.

Proposed Auction Process

In order to better determine the most cost-effective price to pay for renewable generation from non-solar photovoltaic resources, Staff is proposing to use an auction process to set the price for energy purchases. Since LIPA is seeking to purchase a standardized product at a fixed rate for a 10 year period, it is relatively simple for bidders to offer a specified price, and relatively simple for LIPA to rank the bids in economic order to determine the appropriate market-clearing price for that generation. Consistent with other economic markets, including the New York Independent System Operator (“NYISO”) markets for energy and capacity, Staff proposes to rank the price offers from lowest to highest. Bidders would be accepted in order from lowest to highest bid price, up to the lower of 20 MW (based on nameplate capacity in AC MW net of losses), or 90% of the offered capacity of all bidders in the aggregate. The auction clearing price would be set at the last bid price accepted and all accepted bidders would be paid this clearing price. The purpose of the 90% limit is to assure that none of the accepted bidders is able to exercise market power and prevent market manipulation. The proposed tariff provides specific rules in the event of ties.

Staff recommends the same clearing price model that was approved by the Trustees for the second *Clean Solar Initiative II* feed-in tariff for the same reasons. It is an established approach within the NYISO and the other ISOs in the United States for capacity and energy, and has been recognized by the Federal Energy Regulatory Commission (“FERC”). Additionally, the clearing price model is recognized by economists as providing potentially lower prices to consumers because it simplifies the bidding strategies of the generators. When generators know that they will receive the clearing price, they are incentivized to propose their lowest acceptable price in order to gain the most favorable spot at the front of the bidding queue. When generators know that they will be paid their bid price, there is more of an incentive to speculate on the price that other bidders will offer, which is usually higher than the lowest price that the generator would accept, and would produce higher price bids. For this reason, the electric markets throughout the United States have adopted the clearing price approach, and Staff recommends the same pricing model for the *Clean Renewable Energy Initiative* feed-in tariff. Finally, Staff believes that a standard price for all generators is more appropriate for a tariff rather than having to establish separate prices for each individual PPA.

Financial Impacts:

The cost of the *Clean Renewable Energy Initiative* feed-in tariff would be recorded as purchases of electricity under Service Classification No. 11 Buy-Back Service¹, and recovered from customers through the Power Supply Charge².

The financial impact of enrolling 20 MW of renewable resources other than solar PV generation under the *Clean Renewable Energy Initiative* feed-in tariff for 10 years will depend on the clearing price that is ultimately established through the auction and the avoided costs of generation. However, it can be stated that the cost of this round of the Feed-in Tariff will reflect the market price to procure such resources and that LIPA retains the right to reject any bid price in excess of what LIPA determines it would agree to pay and is specifically capped at the clearing price from the *Clean Solar Initiative II* clearing price auction approved by the Trustees in October 2013.

LIPA expects to purchase approximately 115.6 million kWh³ per year from a mix of renewable energy resources including fuel cell, wind and landfill gas totaling the 20 MW of renewable resources other than solar PV generation that is being solicited, which displaces generation that would have been purchased from other sources. Because the auction has not yet occurred, the clearing price has not yet been ascertained. However, if the auction produces a clearing price of 22¢ per kWh as was offered in the first (Clean Solar Initiative I) Feed-in Tariff, the purchase would cost LIPA approximately \$25.4 million per year. The reduction in cost by not making these other purchases is estimated to be 7.77¢ per kWh, or \$9.0 million per year, based on the 2014 approved budget assumptions, for a net cost of \$16.5 million per year. The illustrative nature of this cost calculation must be noted. The clearing price will not be known until the auction process is complete, and, therefore, the cost of the program will not be determined until the auction is completed.

¹ Currently, LIPA purchases energy from more than a dozen qualifying facilities under SC-11, including four resource recovery plants, two landfills and several cogeneration or combined-heat-and-power (CHP) facilities. In addition, the costs incurred under the 50 MW *Clean Solar Initiative I* and 100MW *Clean Solar Initiative II* are purchased under SC-11. The costs of all these purchases are currently recovered through the Power Supply Charge.

² This treatment is identical to other purchases of generation from renewable resources such as the Long Island Solar Farm and Eastern Long Island Solar projects, and the Bear Swamp (Brookfield) hydropower contract.

³ 20 MW times 8,760 hours per year times aggregate 66% capacity factor.

Proposed Tariff Changes:

1. **Expand Service Classification No. 11 – Buyback Service to include the purchase of non-solar photovoltaic generating resources at a fixed price for a specified term.**

Original Tariff Leaves: 255E, 255F, 255G, 255H and proposed LIPA Statement No. 2-FIT

Reason for Tariff Change

To effect that part of the Board of Trustee’s resolution dated October 25, 2012 with regard to generation and transmission, which called for 20 MW of additional customer-owned renewable generation other than solar photovoltaic under the Feed-in Tariff.

2. **Modify the Feed-in Tariff Solar Power Purchase Agreement .**

Affected Tariff Leaves: Addendum

Reason for Tariff Change

To conform certain terms and conditions of the standard power purchase agreement to the modifications proposed for the Tariff for Electric Service

Summary of Proposed Changes:

In summary, the proposed changes to LIPA’s Tariff for Electric Service would improve LIPA’s ability to purchase renewable generating resources in a cost-effective manner, consistent with the Board’s resolution dated October 25, 2012.

The proposed revised Tariff Leaf Nos. 255E, 255F, 255G and 255H, the draft *LIPA Statement No. 2 – FIT* and the proposed *Power Purchase Agreement for Renewable Resources other than Solar Photovoltaics* are attached.

VIII. SERVICE CLASSIFICATIONS (continued):**O. SERVICE CLASSIFICATION NO. 11 - Buy-Back Service (continued):**
(Rate Code: 289)

6. Feed-in Tariff for Renewable Generation Other than Solar Photovoltaic
 - a. The Authority will offer to purchase specific amounts of power and all environmental attributes from renewable resources other than solar photovoltaic at a fixed price per kWh for a term of 10 years to meet its objectives for specific renewable resources. The terms of the offer are defined below.
 - b. Only those renewable generating technologies that are approved for the New York State Renewable Portfolio Standards (and excluding solar photovoltaic) as of August 29, 2014 are eligible to participate. The eligible renewable technologies are Landfill Gas, Wind, Biomass, Hydroelectric, Fuel Cells, Anaerobic Digestion, Tidal Energy, Wave Energy, Ocean Thermal, Ethanol, Methanol, and Biodiesel.
 - c. Generators must enter into a Power Purchase Agreement (the "PPA") for the *Clean Renewable Energy Initiative* and satisfy all the requirements of the *Small Generator Interconnection Procedures* with a minimum output of greater than 100 kW and maximum output of 2,000 kW and interconnection voltage no higher than 13.2 kV.
 - d. Generators that were interconnected to the Authority's system prior to January 1, 2014 are not eligible to participate.
 - e. Generators that received a renewable generation rebate or research and development funding from the Authority are not eligible to participate, regardless of whether the payment was made to the current Customer or a previous Customer at the same location.
 - f. The eligible generator will be connected directly to the Authority's system with a dedicated stand-alone meter, and 100% of the output from the facility will be sold to the Authority pursuant to the PPA, including any beneficial attributes associated with renewable generation.
 - g. The eligible generator will be responsible for all interconnection costs and other costs of developing, installing and maintaining the renewable generating resource, as specified in this Service Classification or elsewhere in the Tariff. The eligible Generator must meet all the requirements of the *Small Generator Interconnection Procedures* and maintain the PPA and an Interconnection Agreement with the Authority for the duration of their participation in the Purchase of Specific Resources.

VIII. SERVICE CLASSIFICATIONS (continued):**O. SERVICE CLASSIFICATION NO. 11 - Buy-Back Service (continued):****(Rate Code: 289)****6. Feed-in Tariff for Renewable Resources Other than Solar Photovoltaic (continued)****h. Rates and Charges for Purchase**

The Authority will determine the rate paid for the purchase of the output of the generators including the environmental attributes from the results of a bidding process as defined below. The rate will be a fixed price expressed in \$/kWh to the nearest \$0.0000 for 10 years applicable to all projects as determined by the bidding process defined below.

The rates determined through the bidding process will be shown on a separate "Statement of Feed-in Tariff Rates" attached to the Tariff. The Statement will show the Type of Resource, the Enrollment Period, and the Purchase Rate for renewable generation other solar photovoltaic.

i. Generator Bidding Process

The Authority will solicit standardized bids from eligible generators between May 5, 2014 and August 29, 2014, inclusive.

i) Eligible generation is limited to renewable resources other than solar photovoltaic generation for capacity of at least 100 kW and no more than 2,000 kW attached to the Authority distribution system. Each bidder must accept the standard terms and conditions authorized for participation in the Feed-in Tariff including the provisions of the PPA and the Small Generator Interconnection Procedures, and specify the bidder's proposed capacity, proposed connection point (including substation and circuit designation) and proposed fixed price per kWh.

ii) The Authority will evaluate the bids as they are received, and will inform the bidder in the event that a bid is deemed non-responsive. The bidder will be given the opportunity to remedy the deficiency, if time allows, by resubmitting the bid, however, the Authority does not guarantee that sufficient time will be afforded to the bidder for resubmittal.

VIII. SERVICE CLASSIFICATIONS (continued):**O. SERVICE CLASSIFICATION NO. 11 - Buy-Back Service (continued):****(Rate Code: 289)****5. Feed-in Tariff for Renewable Resources Other than Solar Photovoltaic (continued)**

iii) The Authority will suspend the bidding process on August 29, 2014 and assess the responsive bids received as of that date in the following sequence:

Step 1 Responsive bids will be ranked in price order with the lowest bid price given the highest priority.

Step 2 Bids will be evaluated for available capacity on the designated circuit and substation. No more than 3 MW of customer generation will be allowed on any circuit, and no more than 10 MW of customer generation will be allowed at any given substation including any pre-existing customer generation. Lower priced bids will be given priority, and bids that exceed the available capacity on a given circuit will be removed from consideration and held in reserve in the event that a successful bidder fails to complete the process.

Step 3 The qualifying bids will be accepted in order of increasing bid price until either: (1) the total desired capacity of 20 MW is achieved; or (2) 90% of the bids by aggregate MW of offered capacity have been accepted. Where multiple bids are received at the same bid price, the bid with the smaller capacity will be prioritized ahead of the bid with the larger capacity. In the event that acceptance of a bid in priority order (or multiple bids of equal size and price) will exceed the total available capacity or 90% of aggregate capacity of all responsive bids, LIPA reserves the right to accept the bid(s) in whole, reject the bid(s) in whole, or offer a reduced amount of capacity to the bidder(s).

Step 4 The rate will be set equal to the bid price of the last bid accepted in Step 3, subject to paragraph (iv) immediately following. That rate will be offered to all successful bidders. In the event that the 20 MW is not fully subscribed in step 3, the Authority may offer unsuccessful or previously excluded eligible bidders the opportunity to accept the clearing price for their generation, in order of increasing bid price, until either the 20 MW is fully subscribed or all bidders have been offered the clearing price.

iv) The Authority reserves the right to reject bids based on price or interconnection concerns, at the Authority's sole discretion. Further, the Authority will not pay more for the non-solar PV renewable generation than the clearing price established for solar PV generation as described on leaf 255C and no premium will be paid for non-solar PV generation attached to the designated substations on the South Fork

VIII. SERVICE CLASSIFICATIONS (continued):**O. SERVICE CLASSIFICATION NO. 11 - Buy-Back Service (continued):****(Rate Code: 289)****5. Feed-in Tariff for Renewable Resources Other than Solar Photovoltaic (continued)**

- v) Generators are encouraged to apply for this program before they apply for interconnection with the Authority's system under the Small Generator Interconnection Procedures. A reasonable time to complete the Small Generator Interconnection Procedures process will be afforded to successful bidders.
- vi) The Authority will determine how long an applicant may take to complete the interconnection process before forfeiting its position. That duration will apply equally to all applicants. The duration begins upon notification to the applicant by the Authority that the applicant's bid has been accepted.
- vii) In the event that any applicant drops out or fails to comply with the PPA or the Small Generator Interconnection Procedures, the Authority reserves the right to terminate such project and offer that capacity to the next lowest bidder at the rate established in section iii above. If no other bidder remains from section iii, above, the Authority may extend an offer to bids received after August 29, 2014, in the order in which such bids were received.
- viii) The Authority may establish a non-refundable application fee between \$500 and \$5,000 depending on the size of the generator.

Long Island Power Authority

Statement of Feed-in Tariff Rates
Under Service Classification No.11

As set forth in the Tariff for Electric Service

<u>Type of Resource</u>	<u>Enrollment Period (beginning)</u>	<u>Total Capacity</u>	<u>Term of Purchase (nameplate)</u>	<u>Purchase Price (per kWh)</u>
Solar Photo-voltaic	7/1/12	50 MW	20 Years	\$0.220000
Solar Photo-voltaic (South Fork) (connected to substations 9B, 9DF, 9E, 9HH, 9L, 9R, 9U, 9Z)	9/30/13	at least 40 MW	20 Years	\$0.xxxxxx
Solar Photo-voltaic (all other locations)	9/30/13	up to 100 MW	20 Years	\$0.xxxxxx
Other than Solar Photo-voltaics	5/5/14	20 MW	10 Years	\$0.xxxxxx

Effective:

[PSEG-LI Brand]

**POWER PURCHASE AGREEMENT
FOR FEED-IN TARIFF FOR RENEWABLE RESOURCES
OTHER THAN SOLAR PHOTOVOLTAIC**

Seller Name: _____

Seller Address: _____

Facility Address: _____

This Power Purchase Agreement ("PPA") for the Feed-In Tariff for Renewable Energy other than Solar Photovoltaic is made by and between the "Seller" and the Long Island Lighting Company d/b/a Power Supply LI ("LIPA" or "Buyer"), a corporation organized under the laws of the State of New York and a wholly-owned subsidiary of the Long Island Power Authority ("Authority"), which is a corporate municipal instrumentality and political subdivision of the State of New York, each with its principal place of business at 333 Earle Ovington Boulevard, Suite 403, Uniondale, New York 11553. Seller and Buyer are hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Buyer is engaged in, among other things, the distribution and sale of electricity for heat, light and power to the public in the State of New York;

WHEREAS, Buyer desires to purchase renewable resource other than solar photovoltaic ("PV") electric capacity and energy (the "Renewable Generation") together with all of the Environmental Attributes (as defined herein) associated with such Renewable Generation (the "Products") from renewable generating technologies that are approved for the New York State Renewable Portfolio Standards (other than solar photovoltaic) to be constructed on customer premises pursuant to a feed-in tariff as defined and provided in Service Classification No. 11 in LIPA's Tariff for Electric Service (the "Tariff");

WHEREAS, Seller desires to develop, design, construct, own and operate a renewable energy electric generating facility other than solar PV with an expected rated capacity of approximately _____ net kilowatts ***[must exceed 100 kW up to and including 2,000 kW and conform to the Tariff]*** alternating current ("AC") ("Nameplate Capacity") that is located in the Town of ***[TOWN]***, New York which is further described below as the "Facility"; and

WHEREAS, Seller desires to sell to Buyer one hundred percent (100%) of the Products produced by the Facility and deliver such Products to LIPA's Electrical System in accordance with the terms and conditions set forth in this PPA.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 - MILESTONE DATES

- 1.1 "Effective Date" means the date by which all required signatures to this PPA have been received.
- 1.2 "Target Commercial Operation Date" or "Target COD" is _____, _____, 20_____.
[NOTE: Parties to insert date as defined in Section 12.2.]
- 1.3 "Termination Date" is the date that is ten (10) years from the earlier of the (i) the original Target COD (without regard to any extensions pursuant to Sections 12.1 or 12.2), or (ii) Commercial Operation Date, as defined herein.

ARTICLE 2 - DEFINITIONS

- 2.1 "AC" – means alternating current, as set forth in the third (3rd) paragraph of the Recitals.
- 2.2 "Arbitrators" has the meaning set forth in Section 9.2(iii).
- 2.3 "Authority" has the meaning set forth in the Preamble, including its successors and assigns as permitted hereunder.
- 2.4 "Authorized COD Extension" has the meaning set forth in Section 12.2.
- 2.5 "Business Day" means Monday through Friday, except for federal or New York State holidays, 9:00 AM to 5:00 PM eastern time.
- 2.6 "Buyer" has the meaning set forth in the Preamble, including its successors and assigns as permitted hereunder.
- 2.7 "Commercial Operation Date" or "COD" means the date on which both of the following conditions have been met: (i) the Facility is substantially complete, operational and capable of delivering Renewable Generation, and Seller has accepted such Facility from its equipment supplier(s) and installer(s); and (ii) the Facility has been interconnected with LIPA's Electrical System in full compliance with the Interconnection Procedures, and applicable law.
- 2.8 "COD Notice" has the meaning set forth in Section 3.6.
- 2.9 "Completion Notice" has the meaning set forth in Section 3.6.
- 2.10 "Delivery Point" is the point at which Seller's interconnection facilities are connected to Buyer's interconnection facilities and where Buyer's metering facilities are located, which is identified in Exhibit 2 to Attachment A in the three-line diagram/sketch.
- 2.11 "Environmental Attributes" means all environmental characteristics, environmental claims, environmental credits, environmental benefits, environmental emissions reductions, environmental offsets, environmental allowances and environmental allocations, existing now or in the future, howsoever characterized, denominated, measured or entitled, attributable to Renewable Generation. Renewable Attributes include but are not limited to: (i) any avoided emissions of pollutants to the air, soil or water including but not limited to sulfur oxides (SO_x), nitrogen oxides (NO), carbon monoxide (CO), particulate matter and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (iii) all set-aside allowances and/or allocations from emissions trading programs, including but not limited to allocations available under 6 NYCRR §§ 204, 237 and 238; and (iv) all credits, certificates, registrations, recordations or other memorializations of whatever

type or sort, representing any of the above, including but not limited to all renewable energy credits. Renewable Attributes do not include (a) any energy, capacity, reliability or other power products, such as ancillary services; (b) production or investment tax credits or grants associated with the construction or operation of the Facility or other financial incentives in the form of credits, reductions, exemptions, deductions, adjustments or allowances associated with the Facility that are applicable to a local, state or federal income taxation obligation; (c) fuel-related subsidies or "tipping fees" that may be paid to the Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular pre-existing pollutants or the promotion of local environmental benefits; or (d) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

- 2.12 "Event of Default" has the meaning set forth in Section 8.1.
- 2.13 "Facility" means Seller's newly manufactured and installed renewable resource electric generating equipment other than solar PV having the Nameplate Capacity and address set forth in the Recitals above, which produces Products in accordance with this PPA. The Facility will include equipment or other tangible assets necessary for the operation and maintenance of the Facility, together with any easements or leases Seller needs for the construction operation and maintenance of the Facility and the delivery of Renewable Generation to the Delivery Point. Any Facility covered by this PPA will be owned or leased, operated and maintained by Seller at Seller's sole cost and expense, for Seller's benefit as legal and beneficial owner of the Facility.
- 2.14 "Facility Address" is the address identified in the Preamble in which the Facility will be installed.
- 2.15 "FERC" has the meaning set forth in Section 3.9.
- 2.16 "FOIL" has the meaning set forth in Section 6.1.
- 2.17 "Forced Outage" means an unplanned outage of one or more of the Facility's components that results in a reduction of the ability of the Facility to produce Renewable Generation.
- 2.18 "Force Majeure" means those events, acts, omissions or circumstances which are outside of the affected Party's control and which could not have been avoided by the affected Party through the employment of Prudent Utility Practices, arising out of or from any act of God, an act or threatened act of the public enemy, war (imminent, declared or otherwise) blockade, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistances to, or adjuncts of, shipping or navigation, perils of the sea, air crash, shipwreck, train wrecks or other failures or delays of transportation, nuclear emergency, radioactive contamination, cyber attack, ionizing radiation, release of hazardous waste or materials, sabotage, terrorist acts, invasion, insurrection, riot, non-site specific industrial disturbance by a union or organized labor (including any non-site specific strike or boycott), fire, flood, lightning, earthquake, hurricane, tornado, winds of extreme force, extreme accumulation of snow or ice, naturally occurring epidemic, explosion or any similar cataclysmic occurrence, acts or restraints of a Governmental Authority other than Buyer which temporarily or permanently prevent required performance under this PPA. Neither Party may claim a Force Majeure for any delay or failure to perform or carry out any provision of this PPA to the extent that such Party has been negligent or has engaged in willful misconduct and such negligence or willful misconduct contributed to that Party's delay or failure to perform or carry out its duties and obligations under this PPA. Neither (i) economic hardship of a Party, (ii) curtailment or reduction in deliveries at the direction of LIPA or unavailability of Buyer's transmission capability, (iii) Seller's ability to sell Products at a price greater than that for which such is herein contracted, (iv) Buyer's ability to purchase Products at a price less than that for which such is herein contracted, (v) inability of a Party to obtain financing, arrange credit support or make payments, nor (vi) loss of Seller's supply including any breakdown of machinery or equipment, shall constitute a Force Majeure. Force Majeure does not include a Forced Outage to the extent such event is not caused or exacerbated by an event of Force Majeure, as described above, and does not include Seller's inability to obtain financing, permits,

- or other equipment and instruments necessary to plan for, construct, operate or maintain the Facility.
- 2.19 "Governmental Authority" means (i) any federal, state, local, municipal, or other government, (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power (including, for the avoidance of doubt, the NYISO), and (iii) any court or governmental tribunal.
- 2.20 "Interconnection Procedures" means the Smart Grid Small Generator Interconnection Procedures as found in LIPA's Tariff, including the relevant interconnection agreement appended thereto, which will be between LIPA and Seller setting forth the terms and conditions under which Seller's Facilities are interconnected with LIPA's Electrical System, which by this reference is incorporated herein.
- 2.21 "Interest Rate" has the meaning set forth in Section 6.2.
- 2.22 "kW" means kilowatt (1,000 watts).
- 2.23 "kWh" means kilowatt hour.
- 2.24 "Nameplate Capacity" means the expected rated capacity of the Facility, as set forth in the third (3rd) paragraph of the Recitals.
- 2.25 "LIPA" has the meaning set forth in the Preamble, including its successors and assigns.
- 2.26 "LIPA's Electrical System" means the electric transmission and distribution system owned and operated by LIPA and consisting of all real and personal property, equipment, machinery, tools and materials and other similar items (including LIPA's interconnection facilities) now or hereafter comprising LIPA's system for transmission and/or distribution of electricity, as modified or expanded from time to time.
- 2.27 "NYISO" means the New York Independent System Operator Inc., or any successor or assignee thereof.
- 2.28 "Party" or "Parties" has the meaning set forth in the Preamble, including the successors and assigns as permitted hereunder.
- 2.29 "PPA" has the meaning identified in the Preamble and shall include all attachments, exhibits, schedules, appendices and other attachments hereto and amendments thereto that may be made from time to time pursuant to the terms of this PPA.
- 2.30 "Products" has the meaning set forth in the second (2nd) paragraph of the Recitals.
- 2.31 "PURPA" means the Public Utility Regulatory Policies Act of 1978, as may be amended from time to time.
- 2.32 "PV" has the meaning set forth in the second (2nd) paragraph of the Recitals.
- 2.33 "Renewable Generation" has the meaning set forth in the second (2nd) paragraph of the Recitals.
- 2.34 "Qualifying Facility" or "QF" means a "qualifying small power production facility", as that term is defined in Section 3(17)(C) of the Federal Power Act, and meets the requirements set forth in 18

C.F.R. § 292.203(a) within the meaning of PURPA and the applicable regulations of the FERC adopted thereunder.

- 2.35 "Seller" has the meaning set forth in the preamble, including its successors and assigns as permitted hereunder.
- 2.36 "Target COD" has the meaning set forth in Section 1.2.
- 2.37 "Tariff" means LIPA's Tariff for Electric Service (as set forth in the second (2nd) paragraph of the Recitals), as it may be modified or superseded from time to time.
- 2.38 "Term" has the meaning set forth in Section 4.1.
- 2.39 "Termination Date" has the meaning set forth in Section 1.3.
- 2.40 "T&D Manager" means PSEG Long Island LLC or any successor or assignee thereof providing certain operation, maintenance and other services to LIPA related to LIPA's electrical transmission and distribution system, pursuant to that [Amended and Restated Operations Services Agreement, dated as of _____,] as amended from time to time, or any other similar agreement or arrangement.

ARTICLE 3 - GENERAL PROVISIONS

- 3.1 Applicability. This PPA shall only apply to the Facility approved pursuant to Attachment A that is to be installed by Seller at the aforementioned Facility Address. This PPA shall only apply to Products produced by the Facility and Seller shall not have the right under this PPA to sell to Buyer any Products procured by Seller from sources other than the Facility.
- 3.2 Interconnection Requirements. At all times during the Term, commencing with the COD, Seller and the Facility shall comply with the Interconnection Procedures for the Facility and Seller's failure to do so shall be an Event of Default. If any conflict arises between any portion of this PPA and the requirements of the Interconnection Procedures, the Interconnection Procedures shall take precedence. Disconnection of the Facility from LIPA's Electrical System for any contractual, operational or safety reason shall not obligate Buyer to replace any revenues thus lost by Seller.
- 3.3 Metering. Seller shall, at Seller's sole cost and expense, provide and install the meter socket approved by Buyer. Except as provided in the Interconnection Procedures, Buyer shall provide a revenue meter to be read by Buyer at approximately monthly intervals for determination of payment due to Seller. Seller will incur monthly maintenance charges as imposed by LIPA pursuant to the Interconnection Procedures in accordance with the applicable Service Classification in the Tariff (presently Service Classification No. 11), and the charge will be deducted from Seller's monthly payment received from Buyer. Any request by Seller to test the metering accuracy shall be conducted at Seller's cost pursuant to Buyer's prevailing rates, practices and policies for testing retail revenue meters. In the event that upon examination any meter is found to be inaccurate by more than one percent (1%), prior readings of the meter for billing purposes going back to the date from which the error arose (or if not known halfway to the date of the last inspection from which the meter was found to be accurate) shall be adjusted accordingly.
- 3.4 No Electric Supply to the Facility. The Parties recognize that this PPA does not provide for the supply of any electric service by LIPA to Seller or to Seller's Facility, and Seller must enter into separate arrangements for the supply of electric services to the Facility. Should the Facility need any electric service, LIPA will identify a connection point to which Seller shall make the appropriate connection arrangements. Seller shall pay LIPA for power consumed and customer service charges in accordance with the prevailing rates set forth in LIPA's Tariff.

- 3.5 Facility Operation. Seller shall provide staff as may be needed to control, operate and maintain the Facility in a manner consistent at all times with Attachment A. Personnel employed by Seller capable of energizing, operating, maintaining and de-energizing the Facility shall be reachable by mobile telephone or other communication device at all times. Seller shall provide Buyer with and maintain a current emergency contact list for the duration of this PPA. Seller is solely responsible for all operations of the Facility, including engineering and technology, supply and transport of all materials or feedstocks to the Facility site, management of site resources, procurement of utilities, compliance with all applicable laws and regulations, removal and disposal of waste and residue, and asset retirement obligations at the end of the Facility's useful life, including dismantling and decommissioning, and Buyer shall have no responsibility or liability whatsoever for such Facility operation, maintenance, replacement or disposal costs.
- 3.6 Information Requirements. Upon completion of the Facility, Seller shall send Buyer a written notice accompanied by a copy of the results of any required tests stating that the conditions specified in Section 2.7(i) have been met ("Completion Notice"). Upon interconnection of the completed Facility to LIPA's Electrical System, as provided for in Section 2.7(ii), LIPA shall send Seller a written notice stating that the conditions specified in Section 2.7(ii) have been met and that COD has occurred ("COD Notice"). Within thirty (30) days after COD, Seller shall provide documentation signed by Seller's equipment provider(s) and installer(s) of the final total installed cost and installed Nameplate Capacity of the Facility covered by this PPA.
- 3.7 Title, Risk of Loss. Title and risk of loss of Products passes from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Products free and clear of all liens, security interests, claims, encumbrances or any interest therein or thereto by any person, arising prior to the Delivery Point.
- 3.8 Adherence with Program Rules. Seller agrees to abide by the Interconnection Procedures and all applicable feed-in tariff program rules and guidelines promulgated by LIPA which are in effect in the Tariff (which is in Service Classification No. 11 in LIPA's Tariff SC-11) on and after the Effective Date of this PPA.
- 3.9 FERC QF Compliance. If the Facility has a Nameplate Capacity of greater than one (1) megawatt AC, then Seller covenants and agrees that, within thirty (30) days of the Commercial Operation Date or longer period allowed by law, it will self-certify the Facility as a QF either by completing and filing Form No. 556 or other similar form with the Federal Energy Regulatory Commission ("FERC") as the same may be amended or otherwise required by law or by obtaining such determination by FERC. If the Facility fails to maintain its status as a QF under PURPA, then notwithstanding anything to the contrary in this PPA, such event shall constitute an Event of Default and Buyer may terminate this PPA. Thereafter, Seller shall be entitled to sell the Products in the wholesale market and arrange for transmission service with the NYISO pursuant to the NYISO's Open Access Transmission Tariff and in compliance with applicable law.
- 3.10 Time for Performance. Time is of the essence for performance of all obligations under this PPA. In the event a Party's performance is delayed or prevented by Force Majeure, provided such affected Party gives prompt notice to the other Party and commences and diligently continues commercially reasonable efforts to resolve or overcome such Force Majeure, except as otherwise expressly provided in this PPA such obligation shall be suspended until such Force Majeure is resolved or overcome, following which such affected Party shall perform such obligation as soon as reasonably practicable.

ARTICLE 4 - TERM OF AGREEMENT

- 4.1 Term. The term hereof ("Term") shall begin on the Effective Date and shall, unless sooner terminated or amended as provided herein, end on the Termination Date as defined in Section 1.3.

ARTICLE 5 - SALE AND PURCHASE OF PRODUCTS

- 5.1 Sale and Purchase Obligation. During the Term and subject to the provisions of this PPA, Seller shall sell and deliver or cause to be delivered, and Buyer shall purchase and receive or cause to be received, one hundred percent (100%) of the Products generated by the Facility up to the Nameplate Capacity. Buyer is not obligated to purchase Products from any replacement facility or Products delivered to any point other than the Delivery Point. Buyer shall have the right to resell the Products.
- 5.2 Fuel Exclusivity. Seller shall not sell or deliver Products to the Buyer generated from any source other than the Facility.
- 5.3 Products Price. Buyer shall pay Seller a price of \$[____] per kWh for all Renewable Generation that is produced and delivered by Seller to the Delivery Point, which shall be the total consideration paid for the provision of all Products. The amount of electricity will be measured using the dedicated meter for the Facility. This rate will remain in effect for the entire Term without adjustment or escalation for any reason.
- 5.4 Taxes and Fees. Seller shall have sole responsibility for paying any applicable taxes or fees applicable to the Facility or from the sale of Products to Buyer, including any federal, state or local income, production, gross receipts or sales tax. These fees include the monthly service administrative charge required by the Tariff and deducted from Seller's monthly payment received from Buyer for Products.
- 5.5 Environmental Attributes. Should Buyer create, sanction, adopt or begin participation in a tracking system of accounting for generation-related Environmental Attributes or certificates associated with renewable generation in the New York Control Area, Buyer shall give Seller written notice thereof, together with instructions and any necessary forms, and thereafter Seller shall deliver such attributes or certificates associated with each Environmental Attribute at the earliest time such certificates or attributes become available for delivery to Buyer. Seller will take all other steps to execute and deliver all such instruments or documents to ensure availability of Environmental Attributes to Buyer.

ARTICLE 6 - BILLING AND PAYMENT

- 6.1 Records, Invoices and Payments. The Facility shall be treated as a unique account in Buyer's or its T&D Manager's accounting system which shall record the amount of Renewable Generation delivered by Seller and which will produce the invoice of payment due from Buyer. The meter at the Delivery Point of the Facility shall be read as part of Buyer's normal meter reading procedures, which is approximately once a month. Buyer shall pay Seller's invoices for Products received in good order on a monthly basis. Prior invoices may be reissued to correct meter inaccuracies in accordance with Section 3.3. All documents received or created by Buyer shall be subject to disclosure under the Freedom of Information Law of New York ("FOIL") as may be amended from time to time.
- 6.2 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay to the other Party the undisputed portion of invoiced amounts on or before the invoice due date. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 9.2. When a billing dispute is resolved, the Party owing shall pay within thirty (30) Business Days of the date of such resolution, with late payment interest computed at the effective interest rate as established by Section 2880 of the Public Authorities Law of the State of New York, and any successor thereto ("Interest Rate").

ARTICLE 7 - SUCCESSORS AND ASSIGNS

- 7.1 Assignment by Seller. This PPA shall not be freely assignable by Seller to any third party without written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed, and, provided said third party assignee executes a written undertaking acceptable in form to Buyer by which assignee agrees to be bound by all the terms and conditions of this PPA; and further provided, that Seller may collaterally assign its interest in this PPA, with the consent of the Buyer, to any lender or any financial institution or institutions participating in the financing of the Facility. No such assignment shall alter or impair the rights of any surety. Provided that Seller reimburses Buyer for Buyer's reasonable legal fees, Buyer agrees upon reasonable request of Seller to provide such legal opinions and consents as may be reasonably requested by Seller and Seller's lender in connection with such financing.
- 7.2 Assignment by Buyer. This PPA shall not be assigned by Buyer without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that Buyer may, without the consent of Seller (i) collaterally transfer, sell, pledge, encumber or assign this PPA or the account, revenues, or proceeds hereof in connection with any financing, (ii) transfer or assign this PPA to an affiliate of Buyer, (iii) transfer or assign this PPA to the T&D Manager; or (iv) transfer or assign this PPA to any person or entity succeeding to all or substantially all of the transmission and distribution assets of Buyer.
- 7.3 Successors and Assigns. This PPA shall bind and inure to the benefit of the Parties to this PPA and any permitted successor or assignee acquiring an interest hereunder consistent with Sections 7.1 and 7.2 hereof. LIPA is not obligated to continue to purchase Products until Seller's successor has accepted and complied with all conditions of this PPA.

ARTICLE 8 - EVENTS OF DEFAULT; DAMAGES

- 8.1 Events of Default. The following shall constitute an event of default, unless excused by Force Majeure ("Event of Default"):
- (a) Failure of either Party to comply with any terms, provisions and conditions set forth in this PPA and such failure continues more than thirty (30) days after receiving written notice of the same; or
 - (b) (i) any Seller breach or inaccuracy of representations or warranties as and when made; (ii) wrongful termination of this PPA by Seller; (iii) failure by Seller to maintain QF status, as described in Section 3.9; (iv) failure by Seller to maintain insurance as required by Article 10; (v) failure by Seller to comply with the Interconnection Procedures causing LIPA's termination of the interconnection, as set forth in Section 12.4; or (vi) any form of diversion and/or theft of electricity from the Buyer by Seller.
- 8.2 Damages. Upon an Event of Default by Seller, Buyer may, upon written notice, at Buyer's option:
- (a) suspend performance or payments pending Seller's remediation of the circumstances constituting the Event of Default;
 - (b) Terminate this PPA;
 - (c) Recover from Seller the damages Buyer incurred as a direct result of the Event of Default; and
 - (d) Except as may be limited under the terms of this PPA, exercise any other right or remedy Buyer may have at law or equity, including specific performance.
- 8.3 Limitation of Remedies. Neither Party shall be liable to the other Party for consequential, exemplary or punitive damages, except and to the extent Seller is liable to indemnify Buyer with respect to any claim by a third party pursuant to Article 11.

ARTICLE 9 - CONTRACT ADMINISTRATION AND NOTICES; DISPUTE RESOLUTION

9.1 Notices in Writing. Except as provided below, notices required by this PPA shall be addressed to the other Party at the addresses as noted below:

Seller: _____

T&D Manager (on behalf of Buyer):

Manager, Power Asset Management
PSEG Long Island LLC
[175 E. Old Country Road
EOB, 2nd Floor
Hicksville, New York 11801
Phone: 516-545-4820
Fax: (516) 806-6130]

For the purpose of making emergency or other communications relating to the operation of the Facility under the provisions of this PPA, the Parties designate the following for said notification:

Seller: _____

T&D Manager (on behalf of Buyer):

Manager, Power Asset Management
PSEG Long Island LLC
175 E. Old Country Road
EOB, 2nd Floor
Hicksville, New York 11801
Phone: 516-545-4820
Fax: (516) 806-6130

9.2 Dispute Resolution.

(i) This Section 9.2 shall constitute the sole and exclusive procedures for the resolution of disputes with respect to interpretation and enforcement of this PPA.

(ii) The Parties shall use commercially reasonable efforts to settle promptly any disputes or claims through negotiation in good faith between representatives with final authority to reach settlement. Either Party may, by written notice to the other Party, refer any such dispute or claim

to a suitable mediator chosen by mutual agreement. If the Parties are unable to agree, each shall designate a qualified mediator, who together shall choose a single mediator. If not resolved by mediation within thirty (30) days, the matter shall be referred to arbitration as set forth below. Discussions and offers pursuant to this Section 9.2 shall be confidential, subject to applicable law, and shall be treated as compromise and settlement negotiations for purposes of Federal Rule of Evidence 408 and applicable New York State rules of evidence.

(iii) Any dispute not subject to the FERC's jurisdiction and not resolved within thirty (30) days from the date that either negotiations or mediation have been requested by a Party or commenced shall be settled exclusively by arbitration in accordance with the then current commercial rules of the American Arbitration Association before three (3) arbitrators (the "Arbitrators"), selected within thirty (30) days in accordance with such rules. The Arbitrators shall be experts in the electric utility industry, qualified in the subject area of the issue in dispute. Judgment on the award rendered by the Arbitrators may be entered in any court having competent jurisdiction.

(iv) Buyer may, without prejudice, proceed in the courts of the State of New York to obtain provisional judicial relief if necessary, in Buyer's sole discretion, to protect public safety, avoid imminent irreparable harm, or provide uninterrupted electrical and other services. Except for temporary injunctive relief under this Section, neither Party shall bring any action at law or in equity to enforce or interpret this PPA without first complying with the provisions of this Section 9.2; provided, however, that if the Arbitrators fail to issue a decision within one hundred eighty (180) days after the commencement of arbitration then either Party may bring such action at law or in equity.

(v) The Arbitrators shall have no authority to make any award inconsistent with this PPA or award damages aside from the prevailing Party's actual, direct damages plus interest at the Interest Rate for each day commencing on the date such damages were incurred through date of payment. The award shall be in writing setting forth factual and legal bases thereof. The Parties shall each bear their own expenses for the arbitration and shall evenly divide the common costs of the arbitration.

(vi) The Arbitrators shall have the discretion to order a pre-hearing exchange of information, including, without limitation production of requested documents, exchange of summaries of testimony, and examination by deposition. The Parties will produce all such information as ordered by the Arbitrators and certify that such information is true, accurate and complete.

(vii) The site of any arbitration brought pursuant to this PPA shall be in Nassau County, New York.

ARTICLE 10 - INSURANCE

10.1 Coverage. Seller, at its sole cost and expense, shall maintain in full force and effect, general liability insurance for personal injury and property damage of at least \$1,000,000 per occurrence. A home or business owner's policy that provides at least this level of coverage is acceptable for meeting the insurance requirement of this PPA.

10.2 Certificate of Insurance. Seller shall provide a Certificate of Insurance documenting the required coverage as set forth in Section 10.1 hereof to Buyer, naming Buyer and T&D Manager as additional named insureds, and the certificate shall become a part of this PPA. Automatic notification to Buyer must be established for both annual renewals and, if appropriate, any termination of such insurance

ARTICLE 11 - INDEMNIFICATION; REPRESENTATIONS AND WARRANTIES

- 11.1 Seller Indemnification. Seller shall indemnify, hold harmless and defend Buyer, its officers, trustees and employees from and against any and all liability, proceedings, suits, cost or expense for loss, damage or injury to persons or property, including the Facility, in any manner directly or indirectly connected with, or arising out of the installation, operation or maintenance of Seller's Facility, except in those cases where loss occurs due solely to the negligence or willful misconduct of Buyer, its officers, trustees or employees.
- 11.2 Tariff Indemnification Provisions. In addition to the foregoing, Section 1.C.7. of LIPA's Tariff (See Leaf Nos. 27-29), is incorporated by reference and shall apply with respect to indemnification.
- 11.3 Representations and Warranties. Seller makes the representations and warranties set forth in Attachment A Exhibit 1, which are incorporated herein by reference as if set forth herein in full.

ARTICLE 12 - TERMINATION OF AGREEMENT

- 12.1 Commercial Operation Date. Subject to Section 12.2 and except in the event of Force Majeure, this PPA will terminate automatically without notice or opportunity to cure if Seller's Facility as described in Exhibit 2 of Attachment A is not fully completed and operational by the Target Commercial Operation Date defined in Section 1.2 unless Buyer grants an extension in writing. A single extension may be granted by Buyer in its sole discretion pursuant to Section 12.2. If this PPA is terminated in accordance with this Section 12.1, Buyer may award one or more new power purchase agreements to projects awaiting capacity on Buyer's waiting list. In the event of Force Majeure, the Target Commercial Operation Date will be extended day for day for each day in which the Force Majeure event or circumstance is continuing.
- 12.2 Authorized COD Extension. The Target Commercial Operation Date has been calculated to be (i) nine (9) months after the Effective Date in the case of Facilities with a Nameplate Capacity up to and including five hundred (500) kW, and (ii) one (1) year after the Effective Date in the case of Facilities with a Nameplate Capacity exceeding five hundred (500) kW and up to and including two thousand (2,000) kW. In the event that Seller cannot achieve the Target Commercial Operation Date specified herein and seeks an authorized extension thereof pursuant to this paragraph ("Authorized COD Extension"), Seller shall deliver written notice to Buyer requesting the Authorized COD Extension provided herein and pledging to achieve commercial operation by the Authorized COD Extension date as provided herein. Buyer shall grant such Authorized COD Extension provided that Seller demonstrates to Buyer's reasonable satisfaction that Seller can meet such date. In the case of Facilities with a Nameplate Capacity up to and including five hundred (500) kW, the Authorized COD Extension date shall be nine (9) months from the Target COD. In the case of Facilities with a Nameplate Capacity exceeding five hundred (500) kW and up to and including two thousand (2,000) kW, the Authorized COD Extension date shall be one (1) year from the Target COD. Notwithstanding any Authorized COD Extension, in no event shall the Termination Date be changed for any PPA for such Facilities.
- 12.3 Force Majeure After COD. If a Force Majeure event completely preventing delivery of Products continues for more than one (1) year, the Party not claiming the Force Majeure will be entitled to terminate this PPA upon written notice.
- 12.4 Audit/Disconnection. Buyer may perform periodic audits and testing of the Facility, including meters, at such intervals as it may deem proper. In the event that LIPA has, pursuant to the provisions of any interconnection agreement, disconnected the Facility, LIPA shall provide written notice thereof as soon as practicable to Seller of the issue or deficiency causing LIPA to disconnect the Facility and all payments shall cease as of the date of disconnection. If after thirty (30) days from the receipt of the aforementioned notice the issue which caused the disconnection is not remedied to Buyer's satisfaction, Buyer may terminate this PPA and provide written notification to Seller.

- 12.5 Right to Lock Out. Upon termination of this PPA for any reason, Buyer may, pursuant to the Interconnection Procedures, padlock the manual disconnect switch in the open (disconnected) position and may modify or remove any Buyer installed equipment.
- 12.6 Post-Termination Purchases of Products. After any termination of the PPA, Buyer will have no obligation to extend or re-enter this PPA or a similar feed-in tariff agreement with Seller and in the event such termination results from a Seller Event of Default in accordance with Section 8.2, or an unremedied disconnection as set forth in Section 12.4, the Facility will not be eligible for any net metering program of Buyer.

ARTICLE 13 - NO THIRD PARTY BENEFICIARIES

Nothing in this PPA confers, is intended to confer, or shall be deemed to confer upon any party other than the Parties hereto and their permitted successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this PPA except as expressly provided in this PPA.

ARTICLE 14 - COMPLETE AGREEMENT

- 14.1 Complete Agreement. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller and supersede any prior agreement between the Parties regarding the subject matter hereof. There will be no amendments to this PPA.
- 14.2 Severability. In the event any provision hereof is determined by a final, non-appealable judgment to be invalid or unenforceable, the remainder of this PPA shall continue in effect in the absence of such invalid or unenforceable provisions, provided that if performance or enforcement of this PPA in the absence of such provision would be inequitable or deprive a Party of a material element of its original bargain, the Parties will reform the PPA in good faith to reflect the original intent of the Parties as closely as possible.

ARTICLE 15 - CONTROLLING LAW; VENUE

The validity, performance, and all matters relating to the interpretation and effect of this PPA shall be governed by the laws of the State of New York, without regard to conflicts of laws principles thereof, and the exclusive jurisdiction and venue for any dispute not subject to resolution by adjudication by the FERC or arbitration in the manner provided in Section 9.2 shall be the courts in and for Nassau County, New York, having subject matter jurisdiction. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this PPA.

ARTICLE 16 – MISCELLANEOUS PROVISIONS

New York State Freedom of Information Law. Each Party expressly acknowledges that LIPA is subject to the requirements of FOIL and must comply therewith. If LIPA is requested by a third party to disclose proprietary technical or personal information, LIPA will (i) promptly notify Seller of the request, (ii) provide Seller the opportunity to provide information regarding the need for confidential treatment, including pursuant to NYS Public Officers Law §87, (iii) evaluate Seller's request for confidential treatment, and (iv) determine if the information is subject to disclosure under FOIL. If LIPA determines that the information is subject to disclosure, it will provide prompt written notice of such determination to Seller so that Seller may seek to appeal LIPA's determination or seek another appropriate remedy, or both, and the Parties may pursue their respective rights and remedies pursuant to NYS Public Officers' Law § 89(5).

New York State Wage and Hours Provisions. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Seller's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department, and Seller and its

subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

Name of Company if applicable

Signature of Authorized Representative

Print Name

Title

Date

Buyer:

**Long Island Lighting Company d/b/a
Power Supply LI
by and through its agent
PSEG Long Island LLC**

Signature of Authorized Representative

Print Name

Title

Date

ATTACHMENT A

EXHIBIT 1

REPRESENTATIONS AND WARRANTIES

Seller's Representations and Warranties. As of the Execution Date, Seller represents and warrants to Buyer that:

1. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
2. it has all regulatory authorizations necessary for it to execute this PPA;
3. the execution, delivery and performance of this PPA 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;
4. this PPA, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses;
5. 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;
6. 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 PPA;
7. no Event of Default 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 PPA;
8. it is acting for its own account, has made its own independent decision to enter into this PPA and as to whether this PPA is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of Buyer in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;
9. it has all real property and contractual rights necessary for it to perform this PPA for its entire Term and no party to any contract or lease is in default, and no circumstances exist which with the passage of time would constitute such default;
10. it has entered into this PPA in connection with the conduct of its business and it has the capacity or ability to make delivery of the Products; and
11. with respect to any sale of Products as of the COD it will be a producer, processor or merchant handling the Products, and it is entering into this PPA for purposes related to its business as such.

EXHIBIT 2

LIST OF FACILITIES SCHEDULES AND POINTS OF INTERCONNECTION

Seller will, at its own cost and expense, operate, maintain, repair, and inspect, and shall be fully responsible for its Facilities in full compliance with LIPA's Interconnection Procedures, unless otherwise specified on this Exhibit 2 and accepted in writing by LIPA. The following information is to be specified for each Point of Interconnection, if applicable.

SECTION ONE - Owner Information (to be supplied by applicant)

1. System Owner
Name _____
Address _____
City, State, ZIP _____
Phone _____
Email _____
2. System Installer/Contractor Name
Name _____
Address _____
City, State, ZIP _____
Phone _____
Email _____
3. Location of system
Storefront name (if applicable) _____
Address _____
City, State, ZIP _____
Phone _____
4. Renewable Generation System Specifications
DC Power Rating (Watts) (if applicable) ____ No. Phases: 1 3
AC Power Rating (Watts) _____
5. Three-Line Diagram/System Sketch
Attach diagram for proposed system with all major components, both DC (if applicable) and AC. Diagram must be dated and initialed.

SECTION TWO - Interconnection Requirements (to be completed by LIPA)

1. Engineering Review of Renewable Generation System Information Provided By Seller

A) Site Plan _____

B) 3-line Diagram with Point of Interconnection & Metering Location _____

Date Approvals Completed: _____

2. Determination of Point of Interconnection

A) Summary of required distribution system additions or modifications:

B) Cost estimate of additions/modifications above:

C) Graphic depicting Point of Interconnection

D) Point of Interconnection detail:

Padmount transformer no. (if known) _____

Overhead transformer at pole no. (if known) _____

3. Metering Requirements

A) Voltage _____

B) Meter installation description

C) Communication protocol (including Seller's access to data)

D) Summary of required metering infrastructure and costs:

4. Summary of Required Upgrades and Estimated Costs to Seller

ESTIMATED TOTAL COST \$ _____

5. Supplemental terms and conditions attached (check one): / _____ Yes / _____ No

SIGNATURES INDICATING ENGINEERING APPROVAL ON NEXT PAGE REQUIRED BEFORE PPA CAN BE EXECUTED

Acknowledged By Seller

Signature: _____ Print Name: _____ Date: _____

Acknowledged by Buyer

Signature: _____ Print Name: _____ Date: _____

Acknowledged by Buyer's T&D Manager for Power Asset Management Purposes

Signature: _____ Print Name: _____ Date: _____

Acknowledged by Buyer's T&D Manager for Interconnection Purposes

Based on the information contained herein, Seller's Facility will meet LIPA's Interconnection Procedures

Signature: _____ Print Name: _____ Date: _____

EXHIBIT 3
RENEWABLE GENERATION INSTALLER'S INFORMATION

Please provide names and contact information for all installation contractors and subcontractors. If any of the Parties are to be determined at a later date, signify this with "TBD" in the appropriate line.

System designer:

Name: _____

Address: _____

Telephone: _____

Email: _____

Certification: _____ Attached _____ On File

Electrical contractor:

Name: _____

Address: _____

Telephone: _____

Email: _____

Certification: _____ Attached _____ On File

EPC contractor (as applicable):

Name: _____

Address: _____

Telephone: _____

Email: _____

Certification: _____ Attached _____ On File