

**National Grid Generation LLC**  
**Electric Rate Schedule No. 1**

**AMENDED AND RESTATED POWER SUPPLY AGREEMENT**

between

**LONG ISLAND LIGHTING COMPANY d/b/a LIPA**

and

**NATIONAL GRID GENERATION LLC**

Dated as of October 10, 2012

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## **AMENDED AND RESTATED POWER SUPPLY AGREEMENT**

This AMENDED AND RESTATED POWER SUPPLY AGREEMENT ("Agreement") is entered into as of October 10, 2012 by and between LONG ISLAND LIGHTING COMPANY, d/b/a LIPA, a New York corporation ("LIPA") and wholly-owned subsidiary of the LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality of the State of New York and a body corporate and politic and political subdivision of the State of New York ("Authority"), and NATIONAL GRID GENERATION LLC, a New York limited liability company ("Genco"). LIPA and Genco are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

WHEREAS, LIPA and Genco, are parties to that certain Power Supply Agreement, dated as of June 26, 1997, as amended ("PSA") pursuant to which Genco provides Capacity, Energy and Ancillary Services (each as hereinafter defined) from specified Genco electric generating facilities on Long Island to LIPA;

WHEREAS, the PSA will expire by its terms on May 28, 2013;

WHEREAS, LIPA has determined that it is in the best interests of LIPA's customers to continue to purchase the Capacity, Energy and Ancillary Services (collectively "Electricity") produced by certain of Genco's Long Island Generating Facilities (as hereinafter defined) on the terms and conditions hereinafter set forth in order to meet the needs of LIPA's customers;

WHEREAS, Genco is willing to continue to produce and sell Electricity to LIPA from such Genco Generating Facilities;

WHEREAS, the Parties also wish to provide for the possible future repowering of certain of Genco's Generating Facilities; and

WHEREAS, the Parties therefore desire to amend and restate the PSA in its entirety on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:



## ARTICLE 1

### DEFINITIONS

Unless otherwise required by the context in which any defined term appears, the following capitalized terms have the meanings specified in this Article 1.

**“AFUDC”** has the meaning given to that term in Section 5.1.1.

**“AGC”** means the equipment used to control a GU in response to a dispatch signal from the NYISO received approximately every six (6) seconds.

**“Affiliate”** means any Person, directly or indirectly controlling or controlled by another Person or under direct or indirect common control with such Person. A Person shall be deemed to control another Person if the first Person possesses, directly or indirectly, the power to direct, or to cause the direction of, the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, “control” includes the direct or indirect beneficial ownership of fifty (50%) percent or more of the outstanding capital stock, membership interests or other voting securities of a Person. Direct or indirect beneficial ownership of ten (10%) percent or more of such voting securities shall create a rebuttable presumption of control.

**“Agreement”** has the meaning given to that term in the introductory paragraph hereof.

**“Allowed ROE”** means Genco’s allowed regulatory return on equity as part of the revenue requirement underlying the Capacity Charge hereunder as established in filings with and approved by the FERC.

**“Ancillary Services”** has the meaning given to that term by the NYISO Rules.

**“Applicable Law”** means any law, rule, regulation, condition or requirement, guideline, ruling, ordinance or order of, or any Legal Entitlement issued by, any Governmental Authority and applicable from time to time to the performance of the obligations of the Parties hereunder.

**“Arbitrators”** has the meaning given to that term in Section 20.3.3.

**“Authority”** has the meaning given to that term in the introductory paragraph hereof.

**“Base Treasury Yield”** has the meaning given to that term in Section 4.3.3.

**“Business Day”** means any day other than a Saturday, Sunday or other day on which banks in New York, New York are authorized or obligated by Applicable Law to close.

**“Calendar Year”** means the twelve (12) month period commencing January 1 through and ending December 31.

**“Capacity”** as measured in MW, means the ability to produce Energy, including Installed Capacity and Unforced Capacity, each term as defined by the NYISO Rules.

**“Capacity Charge”** has the meaning given to that term in Section 5.1.1.

**“Catastrophic Failure”** means an event or circumstance (or series of events or circumstances), whether due to a Force Majeure event, equipment failure, defect or operator action or inaction which causes a major failure of a Generating Facility (or GU thereof) rendering it inoperable and requiring material capital expenditures to return the Generating Facility (or GU thereof) to a state of safe and reliable service.

**“Chair”** has the meaning given to that term in Section 20.3.3.

**“Change of Control”** means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “1934 Act”)) of fifty (50%) percent or more of the outstanding shares of securities or membership interests the holders of which are generally entitled to vote for the election of directors or managers of Genco or the Guarantor, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities (“Voting Stock”)), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act); (ii) any sale, transfer or other disposition of beneficial ownership of fifty (50%) percent or more of the outstanding shares of Voting Stock, on a fully diluted basis, of Genco or the Guarantor, as the case may be; (iii) any sale, lease, assignment, transfer or other disposition of the beneficial ownership in fifty (50%) percent or more of the property, business or assets of Genco or the Guarantor, as the case may be, (iv) a Person other than the current shareholders or members of Genco or the Guarantor, as the case may be, obtains, directly or indirectly, the power to direct or to cause the direction of the management or policies of Genco or the Guarantor, as the case may be, whether through the ownership of capital stock, by contract or otherwise; or (v) any liquidation, dissolution or winding up of Genco or the Guarantor, as the case may be.

**“Commencement Date”** has the meaning given to that term in Section 2.1.

**“Confidential Information”** has the meaning given to that term in Section 22.1.

**“Contract Year”** means the period beginning with January 1 through and ending December 31 in each Calendar Year of the Term, except that the first Contract Year shall begin on the Commencement Date and the last Contract Year shall end on April 30.

**“Contract Year Capital Budget Plan”** has the meaning given to that term in Section 6.2.

**“Contract Year Capital Budget”** has the meaning given to that term in Section 6.3.

**“CPR Rules”** has the meaning given to that term in Section 20.3.3.

**"Day Ahead Market" or "DAM"** has the meaning given to that term in the NYISO Rules.

**"Default Interest Rate"** means the rate established from time to time as the "overpayment rate" pursuant to Subsection (e) of Section 1096 of the New York State Tax Law by the New York State Commission of Taxation and Finance, as applicable to LIPA under Section 2880(7)(c) of the New York State Public Authorities Law and related guidelines adopted by LIPA.

**"Deliver," "Delivered," "Delivering" and "Delivery"** means the provision of Electricity at the Delivery Points of a type known as three-phase alternating current.

**"Delivery Point"** means the low voltage side of each GU's generator step-up transformer or the location as more specifically depicted in the Interconnection Agreement for each of the Generating Facilities.

**"Demolition and Site Remediation Costs"** means the costs and expenses reasonably and necessarily incurred to demolish a Generating Facility and associated facilities and remediate and restore the related site in accordance with Applicable Law, net, however, of any (a) site restoration or remediation costs which Genco may have recovered through rates and accumulated interest on any reserves carried by Genco for site restoration costs, if any, for such Generating Facility whether pre-funded for Asset Retirement Obligations or through a similarly designated or general reserve or contingency account, and (b) tax credits, grants and other governmental support or assistance secured by Genco (for which Genco shall use its commercially reasonable efforts to obtain) for such purpose.

**"Dependable Maximum Net Capability" or "DMNC"** means the maximum net output of a GU over a continuous time period, as periodically determined through tests established and conducted according to NYISO Rules.

**"Dispatch Limitations"** has the meaning given to that term in Section 3.4(e).

**"Dispatch Request"** means any direction LIPA or the NYISO gives to Genco for the purpose of initiating, adjusting, controlling or suspending the production of Energy or Ancillary Services by any of the Generating Facilities, including the issuance of base points by the NYISO.

**"Dispute"** means any dispute arising out of or relating to this Agreement, the performance of a Party's obligations hereunder, or the breach, termination or validity thereof.

**"EDM"** has the meaning given to that term in Section 3.9.4.

**"Early Termination Date"** has the meaning given to that term in Section 2.2.

**"Electricity"** has the meaning given to that term in the Recitals.

**“Eligible Repowering Block”** has the meaning given to that term in Section 11.2.

**“Energy”** means 60Hz three-phase alternating-current electricity measured in MWh.

**“Environmental Laws”** means any Applicable Law or Governmental Rule (including consent decrees and administrative orders), which regulates the use, generation, handling, storage, treatment, transportation, decontamination, clean up, removal, encapsulation, enclosure, abatement or disposal of any Hazardous Substances, including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., the Toxic Substance Control Act, 125 U.S.C. Sections 2601, et seq., the Clean Water Act, 33 U.S.C. Sections 1251, et seq., the Hazardous Materials Transportation Act, 49 U.S.C., Section 5101, the Clean Air Act, 42 U.S.C. Sections 74091, et seq., their state analogues and any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, or order regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substances.

**“Event of Default”** has the meaning given to that term in Sections 20.1.1 and 20.2.1.

**“Excess Profits”** means with respect to a Ramped Down Generating Facility that Genco elects to continue to operate following the Ramp Down Effective Date, the revenue from the sale of Capacity, Energy and Ancillary Services produced by the Ramped Down Generating Facility for a Calendar Year (or portion thereof) following the Ramp Down Effective Date that exceeds Genco's regulatory revenue requirement for such Generating Facility, including with respect to capital additions only those made to the Ramped Down Generating Facility following the Ramp Down Effective Date, assuming a return on equity equal to the then applicable Allowed ROE component of the Capacity Charge for such Calendar Year.

**“Excluded Units”** has the meaning given to that term in Section 7.5.

**“FAA”** has the meaning given to that term in Section 20.3.7.

**“Fees-and-Costs”** means reasonable fees and expenses of employees, attorneys, architects, engineers, accountants, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.

**“FERC”** means the Federal Energy Regulatory Commission.

**“FPA”** means the Federal Power Act, as amended.

**“Five Year Capital Improvement Plan”** has the meaning given to that term in Section 6.2.

**“Fuel”** means the fuel, whether natural gas or fuel oil, for operating the Generating Facilities.

**"Fuel Delivery Point"** means with respect to (a) natural gas, the point at which the LDC's natural gas pipeline delivery system is connected to the pipeline within the Generating Facility that distributes natural gas to the Generating Facility's GU(s), and (b) fuel oil, the fill point at which the fuel delivery vehicle connects to the unloading pipe(s) at the Generating Facility.

**"Fuel Specifications"** means (a) the specifications for the quality of the Fuel oil, as set forth in Appendix H and (b) pipeline quality with respect to natural gas Fuel.

**"GAAP"** means U.S. Generally Accepted Accounting Principles, consistently applied, as the same may be in effect from time to time.

**"Genco Gas Metering Equipment"** has the meaning given to that term in Section 14.2.1.

**"Genco Representative"** has the meaning given to that term in Section 15.2.

**"Generating Facilities"** means the electric generating facilities owned by Genco and listed on Appendix C hereto, including: (a) all systems, structures, equipment and appurtenances associated with each Generating Facility's operation and forming a part thereof; (b) permanent administrative offices and building structures housing Generating Facility equipment; (c) site improvements such as roads, drainage, fencing and landscaping; and (d) structures, pipelines and equipment for: (i) the delivery of Fuel from the Fuel Delivery Point to the Generating Facility; (ii) the transport of water, waste water and other waste disposal; and (iii) other materials, supplies and commodities required to operate the Generating Facility. Each Generating Facility may contain one or more Generating Units. Except where the context otherwise requires, the term "Generating Facility" as used herein also or alternatively, as the case may be, refers to each Generating Unit thereof, as appropriate.

**"Generating Facility Sites"** means each parcel of land upon which each Generating Facility is situated, together with the land contiguous thereto, owned by Genco (or its predecessor) as of the Commencement Date.

**"Generating Unit" or "GU"** means each separately designated electric generator and associated combustion unit and turbine (boiler/steam turbine, combustion turbine, or diesel engine), as applicable, including associated auxiliary equipment, which can be operated independently from any other such unit at the same Generating Facility.

**"Governmental Authority"** means (a) any federal, state local, municipal, or other government, (b) 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, FERC, the NPCC and any FERC-designated Electric Reliability Organization such as NERC) with respect to the Generating Facilities, and (c) any court, governmental tribunal or arbitration panel, other than LIPA or the Authority.

**"Governmental Rule"** means any permit or any law, statute, act, regulation, code, ordinance, rule, judgment, order, decree, directive, requirement, guideline or any similar decision or determination, or any Governmental Authority's official interpretation or administration of any of the foregoing, excluding any acts of LIPA and the Authority, that governs or affects the Generating Facilities.

**"Guarantor"** means KeySpan Corporation.

**"Guaranty"** has the meaning given to that term in Section 18.1.2.

**"Hazardous Substances"** means any substance that is defined or listed in, or otherwise classified pursuant to, any Environmental Law, including materials listed in 49 C.F.R. §172.101 and materials defined as hazardous substances pursuant to Section 101(14) of CERCLA, as a "hazardous substance," "extremely hazardous substance," "hazardous material," "hazardous waste," "infectious waste," "medical waste," "toxic substance," "toxic pollutant," or any other formulation intended to classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, or reproductive toxicity; and pollutants, effluents, residues, contaminants, asbestos, petroleum (including all petroleum-related products, by-products, and wastes), polychlorinated biphenyls, urea formaldehyde, radon gas, methane gas, radioactive materials (including any source, special nuclear, or by-product material), explosives, chlorofluorocarbons, lead or lead-based materials, and any other substance whose presence could be detrimental to property, health, or the environment.

**"Interconnection Agreement"** has the meaning given to that term in Section 7.4.

**"LDC Gas Metering Equipment"** has the meaning given to that term in Section 14.2.1.

**"Legal Entitlement"** means any permit, license, approval, authorization, consent and entitlement of whatever kind and however described which is required under Applicable Law to be obtained or maintained by any Person with respect to the performance of any obligation under this Agreement.

**"Legal Holiday"** means New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve, or other such days as the Parties may mutually agree, from time to time.

**"Legal Proceeding"** means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

**"LIPA"** has the meaning given to that term in the introductory paragraph hereof.

**"LIPA Fault"** means any breach, failure of compliance, or nonperformance by LIPA of its obligations hereunder or any negligence or willful misconduct by LIPA under this

Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of LIPA) that materially and adversely affects Genco's performance or Genco's rights or obligations under this Agreement.

**"LIPA's Gas Metering Equipment"** has the meaning given to that term in Section 14.2.1.

**"LIPA's Metering Equipment"** has the meaning given to that term in Section 14.1.1.

**"LIPA Property Tax Share"** has the meaning given to that term in Section 12.1(b).

**"LIPA Representative"** has the meaning given to that term in Section 15.1.

**"Local Distribution Company" or "LDC"** means the natural gas distribution utility (currently KeySpan Gas East Corporation d/b/a/ National Grid) that delivers natural gas received on an interstate pipeline to the Generating Facilities.

**"Loss-and-Expense"** means any and all losses, liabilities, obligations, damages, delays, fines, penalties, judgments, deposits, costs, claims, demands, charges, assessments, taxes, or expenses, including all Fees-And-Costs.

**"Material Decline in Guarantor's Credit Rating"** has the meaning given to that term in Section 18.1.3.

**"Merger Agreement"** means the Agreement and Plan of Merger by and among BL Holding Corp., LIPA, the Authority and LIPA Acquisition Corp dated as of June 26, 1997.

**"Monthly Ancillary Service Charge"** has the meaning given to that term in Section 5.1.3.

**"Monthly Capacity Charge"** has the meaning given to that term in Section 5.1.1.

**"Monthly Capacity Payment Adjustment Charge"** has the meaning given to that term in Section 5.1.4.

**"Monthly RGGI Charge"** has the meaning given to that term in Section 5.1.6.

**"Monthly Variable Charge"** has the meaning given to that term in Section 5.1.2.

**"Monthly Variable Payment Adjustment Charge"** has the meaning given to that term in Section 5.1.5.

**"MW"** means a megawatt of Capacity.

**"MWh"** means a megawatt hour of Energy.

**“NERC”** means the North American Electric Reliability Corporation and any successor organization thereto.

**“Net Book Value”** means for a GU or Generating Facility, as applicable, the Gross Book Value of Plant, Less Accumulated Depreciation (as defined in Appendix A) plus Construction Work In Progress (CWIP), Completed Construction Not Classified (CCNC), Retirement Work In Progress (RWIP) and any Inventory Balance (net of salvage value) transferred from Working Capital that can be used only at such Generating Facility or GU. The preceding values will be GU specific where required by Ramp Down Capacity Blocks or other provisions of this Agreement. The Plant and Inventory Balances set forth on Genco's financial statements shall be recorded in accordance with GAAP. The Net Book Value of a Generating Facility shall be subject to LIPA's review of Genco's related supporting documentation (including related workpapers) therefor in reasonable detail, as LIPA may reasonably request, and resolution of any Dispute with respect thereto pursuant to the dispute resolution provisions of Section 20.3.

**“NPCC”** means the Northeast Power Coordinating Council and any successor organization thereto.

**“NYISO”** means the New York Independent System Operator Inc. and any successor organization thereto.

**“NYISO Rules”** means the NYISO's Market Administration and Control Area Services Tariff, Open Access Transmission Tariff, and all manuals, guides, technical bulletins and mandatory rules thereunder and any successor provisions thereto.

**“Other GU”** has the meaning given to that term in Section 10.1.1.

**“PPA”** has the meaning given to that term in Section 11.3.

**“PSA”** has the meaning given to that term in the Recitals.

**“Party”** or **“Parties”** has the meaning given to those terms in the introductory paragraph hereof.

**“Party Appointed Arbitrators”** has the meaning given to that term in Section 20.3.3.

**“Performance Guarantees”** has the meaning given to that term in Section 5.2.

**“Person”** means, unless otherwise specified, any individual, corporation, firm, company, trust, business trust, legal entity, general partnership, limited partnership, joint venture, association, joint-stock company, limited liability company, unincorporated organization, government or any agency or political subdivision thereof or other entity, including a Governmental Authority.

**“Prudent Utility Practice”** means any of the practices, methods and acts engaged in or recognized as common practice within the electric utility industry in the United States at the time in question, or any of the practices, methods and acts which, in the exercise of



reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired results at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts expected within the electric power industry to accomplish the desired results, having due regard for, among other things, manufacturers' operating instructions, the preservation of manufacturers' warranties, the requirements of Governmental Authorities of competent jurisdiction and the requirements of this Agreement.

**"Ramp Down"** has the meaning given to that term in Section 10.1.

**"Ramp Down Capacity Block"** has the meaning given to that term in Section 10.1.1.

**"Ramp Down Effective Date"** has the meaning given to that term in Section 10.1.1.

**"Ramp Down Notice"** has the meaning given to that term in Section 10.1.2.

**"Ramp Down Option"** has the meaning given to that term in Section 10.1.1.

**"Rate Reopener"** has the meaning given to that term in Section 4.4

**"Rating Agencies"** means Moody's Investors Service, Inc., Standard and Poor's Ratings Services and Fitch Ratings, Inc. and any of their respective successors.

**"Regulatory Rights"** means all environmental, regulatory and emission reduction credits and allowances, energy injection and CRIS rights and similar rights and credits associated with a Generating Facility and the related Generating Facility Site.

**"Remote Starting Capability"** means equipment installed at an internal combustion Generating Facility that allows it to be started from LIPA's designated control room without on-site staffing.

**"Repowering"** has the meaning given to that term in Article 11.

**"Repowering Option"** has the meaning given to that term in Section 11.1.

**"Repowering Payment"** has the meaning given to that term in Section 11.9.

**"Restricted Generating Facility"** has the meaning given to that term in Section 10.2.2(c).

**"Retirement Effective Date"** has the meaning given to that term in Section 13.1.

**"Retirement Eligible"** means with respect to a Generating Facility or GU thereof that such Generating Facility or GU thereof can be permanently removed from service without creating a "Reliability Need" as defined in Attachment Y of the Open Access Transmission Tariff of the NYISO.

**“Retirement Payment”** has the meaning given to that term in Section 13.1.

**“RFP”** has the meaning given to that term in Section 11.3.

**“RGGI”** has the meaning given to that term in Section 9.3.

**“Schedule F Rights”** has the meaning given to that term in Section 10.2.2(c).

**“Service Area”** means the counties of Suffolk and Nassau and that portion of the Rockaway Peninsula in the County of Queens constituting the Authority’s electric franchise area as of the Commencement Date. “Service Area” does not include the Villages of Freeport, Rockville Centre, and Greenport.

**“Steam GU”** means the Barrett Units 1 & 2, Port Jefferson Units 3 & 4 and Northport Units 1-4.

**“Summer Operating Period”** means the six (6) month period commencing May 1 through and ending October 31.

**“System Emergency”** means any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation resources that could adversely affect the reliability of an electric system.

**“System Pre-Emergency”** means a condition which, in accordance with Prudent Utility Practice and as may be specified by the NYISO Rules, reasonably could be expected, if permitted to continue, to contribute to a System Emergency or to a degraded operating condition.

**“T&D System”** means the electric transmission and distribution system located in the Service Area which provides the means for transmitting and distributing Electricity to LIPA’s customers.

**“Term”** has the meaning given to that term in Section 2.1.

**“Tracking Account”** has the meaning given to that term in Section 10.4.

**“Unit Heat Rate”** means the Btu of fuel per kilowatt hour of net generation.

**“Weighted Cost of Capital”** means Genco’s FERC allowed and approved debt interest rate multiplied by .5 plus Genco’s after-tax Allowed ROE multiplied by .5; provided, however, that the .5 weighting factor shall be subject to adjustment by the FERC pursuant to the Rate Reopener.

**“Winter Operating Period”** means the six (6) month period commencing November 1 and ending April 30.

## ARTICLE 2

### TERM

**2.1 General; Effectiveness.** The term of this Agreement ("Term") shall commence on, but not earlier than, 12:00 a.m. Eastern Time on May 28, 2013 and shall end at 11:59 p.m., Eastern Time on April 30, 2028, unless earlier terminated by LIPA as provided in Section 2.2. Notwithstanding the foregoing, this Agreement shall not become effective and legally binding upon Parties until it has been (a) approved by the New York State Comptroller and the New York Attorney General and (b) accepted for filing by the FERC pursuant to Section 205 of the FPA and the rules and regulations of the FERC thereunder, which approvals and acceptance for filing shall be reasonably satisfactory to the Parties. The date upon which this Agreement becomes effective and legally binding is referred to hereafter as the "Commencement Date".

**2.2 Early Termination.** Notwithstanding Section 2.1, LIPA shall have the right, exercisable in its sole discretion, to terminate the Agreement upon not less than two (2) years' prior written notice to Genco; provided, however, that any such termination may be effective no earlier than April 30, 2025 and thereafter may be effective only as of any subsequent April 30 as LIPA shall specify in its termination notice (an "Early Termination Date").

**2.3 Survival.** The rights and obligations of the Parties pursuant to Sections 5.3, 5.4, Article 9, Sections 10.2, 10.3, 10.4, Article 11, Article 12, Sections 16.1, 16.2, 17.1.2, 17.1.4, Article 19, Sections 20.3, 20.4, Article 22 and Article 24 and the Set Off Rights and Records provisions set forth in Appendix I shall survive the expiration or earlier termination of this Agreement, and no such expiration or termination shall limit or otherwise affect the respective rights or obligations of the Parties accrued prior to the date of such expiration or termination. At the conclusion of the Term, all other obligations of the Parties shall terminate unless extended or otherwise survive as provided herein.

## ARTICLE 3

### POWER SUPPLY

**3.1 Sale and Delivery of Electricity.** During the Term of this Agreement, except as otherwise provided herein, Genco agrees to sell and Deliver to LIPA and LIPA agrees to purchase and accept Delivery from Genco, as follows:

**3.1.1 Capacity.** Genco will sell and provide to LIPA all the Capacity (MW) from the Generating Facilities in accordance with the terms and conditions of this Agreement.

**3.1.2 Energy.** Genco will sell and Deliver to LIPA all the Energy it produces from the Generating Facilities in response to Dispatch Requests in accordance with the terms and conditions of this Agreement.

**3.1.3 Ancillary Services.** Genco will sell and provide to LIPA all the Ancillary Services provided by the Generating Facilities in accordance with this Agreement.

**3.2 Regulation.** Genco will seek and maintain all necessary regulatory approvals from Governmental Authorities required for the provision of service to LIPA as provided for and contemplated by this Agreement. LIPA shall provide Genco with such assistance and support as is reasonably required in connection with Genco obtaining and maintaining such regulatory approvals, and the Parties shall provide each other with information, data, reports and analysis in their possession as may be reasonably requested in connection with the foregoing.

**3.3 Fuel.** LIPA will provide Fuel at its own expense to the Fuel Delivery Points in accordance with the Fuel Specifications in order to enable Genco to generate Energy from the Generating Facilities. LIPA shall arrange for Fuel oil to be tested prior to delivery to demonstrate compliance with the Fuel Specifications. In the event that Fuel (oil or natural gas) meeting the Fuel Specifications for any Generating Facility is not available on commercially reasonable terms, LIPA may, with Genco's approval (which may not be unreasonably withheld or delayed), provide a substitute Fuel that is substantially in compliance with the Fuel Specifications. In the event Genco does not approve such substitution, LIPA shall have no further obligation to provide Fuel for such Generating Facility during the period in which Fuel meeting the Fuel Specifications is not available on commercially reasonable terms, and such Generating Facility shall be considered unavailable for Dispatch Requests (or partially unavailable in the event of dual Fuel operation where only one Fuel is unavailable) during such period. Such periods of unavailability shall be excluded for purposes of calculating compliance with the Performance Guarantees; but only if the Generating Facility was available to generate Energy during such period. Once Fuel has been delivered to the Fuel Delivery Point, Genco shall be responsible for Fuel storage, holding, processing and handling, including taking such actions consistent with Prudent Utility Practice to prevent leaks, spills, loss, damage, theft, seizure or destruction of Fuel and assuring that the Fuel Genco handles and stores remains in compliance with the Fuel Specifications. Title to Fuel, however, shall remain with LIPA, which shall have the right to dispose of Fuel until burned by a Generating Facility. Genco shall maintain sufficient oil storage capacity at each Generating Facility site to enable the Generating Facilities to produce Electricity in accordance with the Performance Guarantees, considering anticipated demand, the availability of natural gas, and the time required to obtain oil deliveries. Genco shall consult with LIPA as to the appropriate amount of storage capacity.

**3.4 Dispatch of Generating Facilities.**

(a) Genco shall produce Energy and Ancillary Services in accordance with Dispatch Requests. Where applicable, Genco shall implement NYISO Dispatch Requests through AGC at the Generating Facilities. Should the AGC equipment become inoperable, Genco shall manually follow the NYISO base points and directions and use commercially reasonable efforts to restore the AGC as soon as practicable. For Generating Facilities without AGC, Genco shall manually implement LIPA's Dispatch Requests.

(b) Notwithstanding the provisions of Section 3.4(a), in the event that Remote Starting Capability at any internal combustion GU becomes inoperable, Genco shall, upon receiving notice of such failure, staff the relevant Generating Facility Site as follows: (1) if at the time of notification of failure, the GU has already been bid into the NYISO Day Ahead Market for the following day and the Hour Ahead Market for the day in which the failure occurs; (2) during heat waves and other periods of anticipated system

stress as determined through consultation with LIPA; (3) at all other times, only the Barrett, Holtsville and Wading River sites during normal business hours and at LIPA's request up to a total of two (2) shifts per day (including weekends) for the lesser of the duration of the inoperability of the Remote Starting Capability or two (2) weeks. In addition, Genco shall provide staffing for any longer duration or at other sites as LIPA may request, provided that LIPA shall reimburse Genco for its reasonable incremental labor costs.

(c) Should Genco fail timely to meet a Dispatch Request as a result of the failure of Remote Starting Capability due to a failure of the communication system from LIPA's control room, such non-performance will not be included for measurement purposes with respect to the UCAP Guarantee (as described in Appendix F).

(d) Genco may, consistent with Prudent Utility Practice, override the automatic generation, reactive power and load frequency control equipment if Genco deems it necessary to preserve the safety and integrity of its Generating Facilities or in order to react to System Emergencies and System Pre-Emergencies.

(e) Except when required to respond to System Emergencies and System Pre-Emergencies, or as otherwise requested by LIPA or the NYISO for reliability reasons, LIPA will cause Dispatch Requests to conform to the limitations set forth in Appendix E, including but not limited to, minimum loadings, ramp rates, minimum down time, internal combustion loadings and start-up times on the Generating Facilities ("Dispatch Limitations"). LIPA shall not be liable for any NYISO Dispatch Request that fails to conform to the Dispatch Limitations provided that LIPA has accurately communicated the applicable Dispatch Limitations to the NYISO. In such event, Genco shall comply with the NYISO Dispatch Request consistent with Prudent Utility Practice. Genco will provide LIPA with written notice as promptly as practicable in the event Genco determines that Prudent Utility Practice requires changes to the Dispatch Limitations, either on a short-term or long-term basis. By way of example, such changes may be required due to conditions such as equipment problems, opacity and voltage regulation. Absent such change, Genco will confirm the continued applicability of the prevailing Dispatch Limitations within ten (10) days following the beginning of each Contract Year. Genco shall demonstrate to the reasonable satisfaction of LIPA and the NYISO that any changes to the Dispatch Limitations as set forth in Appendix E conform to applicable NYISO Rules.

(f) Genco will operate the Generating Facilities within their voltage capability curves as provided by the original equipment manufacturer, and as controlled by the unit's voltage control system and protective relaying system subject to the requirements of the applicable Interconnection Agreement.

**3.5 Maintenance Scheduling.** Genco will furnish to LIPA a five (5) year maintenance outage schedule for each Generating Facility not later than ninety (90) days prior to the commencement of each Contract Year. Genco will (i) schedule maintenance outages and perform maintenance activities in accordance with the NYISO Rules, and (ii) consult with LIPA, to the extent reasonably practicable, so as to coordinate maintenance outages for the Generating Facilities with maintenance outages for other generating facilities under contract to LIPA; provided that any incremental costs or savings solely and directly resulting from changes to the

otherwise applicable maintenance outage schedule for the Generating Facilities shall be paid by or credited to LIPA as applicable. If and to the extent that Genco demonstrates that such changes would adversely impact Genco's ability to meet one or more Performance Guarantees, and LIPA nonetheless requests such changes, then any such adverse impact actually realized shall not be taken into account in the determination of any performance penalty payments thereunder. Genco may not schedule major maintenance outages during June, July and August, except in the case of System Emergency or System Pre-Emergency, in response to unusual circumstances in accordance with Prudent Utility Practice or unless the Parties otherwise agree. The Parties recognize that certain nonscheduled routine maintenance will be conducted from time to time, as required, for the purpose of inspection, cleaning and/ or repair of power plant equipment. Genco will use commercially reasonable efforts to schedule and implement such outages during off peak periods and will provide LIPA with as much advance notice as is practicable under the circumstances when such maintenance is required. Genco shall advise LIPA of all outages (both planned and unplanned) as soon as practicable by means of an information technology system designated by LIPA. Any such information technology system shall be at no incremental cost to Genco.

**3.6 Dependable Maximum Net Capability (DMNC) Testing.** Genco will perform capacity tests on its Generating Facilities to determine the DMNC rating, consistent with NYISO Rules.

**3.7 Power Plant Electric Use.** The Parties recognize and agree that the Generating Facilities require electricity for operating auxiliary systems. LIPA and Genco shall cooperate to arrange for such station service electricity to be provided by the GUs located at each Generating Facility to the extent permitted by NYISO Rules. If and to the extent that station service cannot be fully provided by each Generating Facility itself, LIPA and Genco shall arrange for such station service electricity to be provided at commercially reasonable rates pursuant to NYISO Rules or LIPA's electric tariff, as applicable. Charges for such station service power will be borne by LIPA to the extent that gross generation from a Generating Facility is injected into the T&D System and station service electricity is withdrawn from the T&D System for use in the Generating Facility. If and to the extent that Genco is charged for any station service power pursuant to NYISO Rules for LIPA's electric power, such charge shall be recovered by Genco, without any markup thereto, through the Monthly Variable Payment Adjustment Charge.

**3.8 Performance Guarantees.** The Parties have established certain Performance Guarantees applicable to Genco's operation of the Generating Facilities. The Performance Guarantees are set forth in Appendix F.

**3.9 Operational Information.**

**3.9.1 General.** Genco shall provide to LIPA in a timely fashion all information regarding the performance characteristics and operational status (projected and actual) of the Generating Facilities that Genco has in its possession and which LIPA or NYISO may reasonably require. In the event NYISO Rules require LIPA or Genco to provide information regarding the Generating Facilities that Genco does not possess, Genco shall use commercially reasonable efforts to obtain such information. LIPA shall reimburse Genco for any reasonable incremental cost which Genco incurs in obtaining

such information that LIPA is required to provide under NYISO Rules. Genco shall bear the cost of obtaining any such information that it is required to provide under NYISO Rules.

**3.9.2 Regulatory Requirements.** LIPA and Genco shall provide each other with any documents or evidence reasonably required to satisfy NERC or NPCC or other internal or external auditors, reliability organizations and regulatory agencies that the Generating Facilities are in compliance with NERC reliability standards and NPCC requirements. LIPA and Genco will notify the other as reasonably in advance as practicable of any action to be taken that is reasonably expected to jeopardize the other's compliance with NERC reliability standards, and will cooperate with each other to support continued compliance with NERC regulatory standards and NPCC requirements.

**3.9.3 Operating Procedures.** LIPA and Genco shall mutually develop operating procedures related to communication, testing and other operational matters necessary, appropriate or advisable to carry out this Agreement and as may be required by Prudent Utility Practice.

**3.9.4 Information Integration.** Genco shall collect and transmit data over LIPA's communication network with respect to the operational aspects of the Generating Facilities, including energy output, fuel input, environmental emissions, and bidding parameters, in a manner and configuration that is fully compatible with LIPA's Enterprise Data Management technical architecture ("EDM") as it may exist from time to time. Genco shall be responsible for the costs of developing cost estimates for implementing any required changes to its data collection, communication and information technology systems and equipment to the extent necessary to comply with the foregoing requirement. LIPA shall approve implementation of the project and shall be responsible for the implementation costs thereof up to an amount upon which the Parties shall mutually agree. If and to the extent that annual maintenance costs of the new Genco systems exceed \$25,000, LIPA will pay these costs through the Monthly Variable Charge. Genco shall be responsible for all other ongoing costs associated with maintaining its communication and information technology systems and equipment and shall participate in the power supply management partners meetings to remain familiar with and maintain the EDM documents.

## **ARTICLE 4**

### **RATES - GENERALLY**

**4.1 Capacity, Energy and Ancillary Services.** The rates that LIPA shall pay to Genco for Capacity, Energy and Ancillary Services from the Generating Facilities (subject to adjustment as hereinafter provided) shall be as more specifically set forth in Article 5.

**4.2 Rates Inclusive.** The Capacity Charge will include fixed operations and maintenance costs. Genco will recover from LIPA operations and maintenance costs that vary according to the dispatched output of a Generating Facility through the Monthly Variable Charge. The operations and maintenance costs recovered through the Capacity and Monthly Variable Charges

shall include Genco's currently known regulatory compliance costs; provided, however, that those compliance costs listed in Appendix D shall be recovered as set forth therein. In addition to the items set forth in Appendix D, Genco shall be entitled to recover any additional prudently incurred environmental compliance costs that may arise subsequent to the setting of the charges herein through the Monthly Capacity Payment Adjustment Charge or the Monthly Variable Payment Adjustment Charge, as appropriate, based on the nature of the environmental compliance cost incurred. In such event, Genco shall demonstrate that such compliance costs are incremental to the fixed or variable operations and maintenance costs already recovered through the Capacity Charge or Monthly Variable Charge.

**4.3 ROE Reopener.** Commencing with the start of the fourth (4th) Contract Year, Genco and LIPA shall each have the right to file an application with the FERC to adjust the then prevailing Allowed ROE component of the Monthly Capacity Charge hereunder if, but only if, the following conditions precedent to the Parties' right to make such a filing are satisfied and subject to the further limitations set forth in this Section 4.3.

**4.3.1 Initial ROE Adjustment.** During the fourth (4th) through and including the sixth (6th) Contract Years of the Term, a Party may file such an application with the FERC to adjust the Allowed ROE in the event that the average weekly yield on 10-year U.S. Treasury Bonds for any three (3) consecutive month period during such Contract Years exceeds or falls below the Base Treasury Yield (as such term is defined below) by more than two hundred fifty (250) basis points.

**4.3.2 Subsequent ROE Adjustment.** From and after the beginning of the seventh (7th) Contract Year through the remainder of the Term, a Party may file such an application with the FERC if the average weekly yield on 10-year U.S. Treasury Bonds for any three (3) consecutive month period following the start of the seventh (7th) Contract Year exceeds or falls below the Base Treasury Yield by more than two hundred (200) basis points.

**4.3.3 Base Treasury Yield.** For purposes of this Section 4.3, the term "Base Treasury Yield" shall mean the average weekly yield on 10-year U.S. Treasury Bonds for the three (3) consecutive month period ending May 31, 2013; provided, however, that if the Monthly Capacity Charge hereunder is adjusted pursuant to either this Section 4.3 or a Rate Reopener pursuant to Section 4.4, then the Base Treasury Yield shall mean the average weekly yield on 10-year U.S. Treasury Bonds for the consecutive three (3) month period ending on the last day of the month immediately preceding the month during which the new Monthly Capacity Charge becomes effective.

**4.3.4 Limitation on FERC Filing.** The Party filing an application with the FERC pursuant to Section 4.3 shall seek only to change the Monthly Capacity Charge only by the revenue amount required to reflect the changed Allowed ROE, including related taxes, as applied to the then applicable rate base. In addition, the application shall specify the proposed new Allowed ROE and shall demonstrate either that (a) in the case of a Genco filing to increase the Allowed ROE, the proposed new Allowed ROE is just and reasonable within the meaning of Section 205 of the FPA or (b) in the case of a



LIPA filing to lower the Allowed ROE, that the existing Allowed ROE is unjust and unreasonable within the meaning of Section 206 of the FPA. The application may not propose to change any other component of the revenue requirement used to determine the Monthly Capacity Charge or the Monthly Variable Charge. The other Party may oppose the proposed change in the Allowed ROE and provide evidence of mitigating factors that would reduce the amount of the proposed change.

**4.4 Rate Reopener.** Commencing with the start of the sixth (6th) Contract Year, Genco shall have the right to file (but on one occasion only) an application with the FERC seeking a rate increase pursuant to Section 205 of the FPA ("Rate Reopener"). Genco may propose in such Rate Reopener any change or modification to the revenue requirement underlying the Monthly Capacity Charge or Monthly Variable Charge (including the then Allowed ROE), and LIPA shall have the right to challenge any such proposed change or modification.

**4.5 No Other Rate Reset.** Genco and LIPA hereby agree that except as specifically provided in Section 4.3 and Section 4.4 and elsewhere in this Agreement, the rates to be paid for Capacity, Energy and Ancillary Services and the components thereof shall not be subject to reset or adjustment other than as provided in Appendix A, and each Party hereby irrevocably waives and relinquishes any right it may have to apply to the FERC for any change or adjustment in such rates pursuant to any provision of the FPA or the rules and regulations of the FERC thereunder.

## ARTICLE 5

### PURCHASE PRICE AND PAYMENT

**5.1 Rate Components.** Except as otherwise specifically provided in this Agreement, LIPA shall pay Genco for Electricity delivered pursuant to this Agreement at the prices calculated as set forth in Appendix A and Appendix B hereof. During the Term, LIPA will make monthly payments to Genco consisting of an amount equal to the (a) the Monthly Capacity Charge, (b) the Monthly Variable Charge, (c) the Monthly Ancillary Service Charge, (d) the Monthly Capacity Payment Adjustment Charge, (e) the Monthly Variable Adjustment Charge and (f) the Monthly RGGI Charge.

**5.1.1 Monthly Capacity Charge.** The Monthly Capacity Charge (the "Monthly Capacity Charge") shall equal 1/12 of the annual Capacity charge (the "Capacity Charge") as set forth in Appendix A hereto. The annual Capacity Charge is designed to compensate Genco for its fixed costs of producing Electricity from the Generating Facilities (including associated common costs) including: (a) return on investment, and depreciation for the undepreciated cost of the Generating Facilities, (b) completed capital additions approved in accordance with Section 6.3, including an Allowance for Funds Used During Construction ("AFUDC"), (c) insurance, (d) income taxes (federal, state, local, net or gross), (e) property and all other taxes, (f) fixed operations and maintenance costs, including an allowance for scheduled major maintenance and overhauls and (g) administrative costs. The annual Capacity Charge will exclude necessary costs of demolition, environmental remediation costs related to demolition,

and site restoration (other than as part of Genco's depreciation charge) which Genco shall bear except as otherwise provided in this Agreement.

**5.1.2 *Monthly Variable Charge.*** The Monthly Variable Charge (the "Monthly Variable Charge") will be based on the variable operations and maintenance costs as set forth in Appendix A, multiplied by the net MWh generated by the Generating Facilities. The variable operations and maintenance costs include those materials, supplies and maintenance costs, environmental fees or charges, and labor costs, if any, which vary directly with the amount of Energy generated by such Generating Facilities. Variable operations and maintenance costs shall not include any costs recovered through the Monthly Capacity Charge or charges for starts, fired hours of operation and fuel swaps defined in Appendix B. As provided in Section 3.3, LIPA shall be responsible for providing the Fuel required to operate the Generating Facilities for the purpose of providing Energy to LIPA and, accordingly, there will be no charge for Fuel pursuant to this Agreement.

**5.1.3 *Monthly Ancillary Service Charge.*** LIPA will pay for any documented incremental costs incurred by Genco in providing Ancillary Services to LIPA, if any such services are required by LIPA which are not otherwise compensated by LIPA through the Monthly Capacity Charge or the Monthly Variable Charge or otherwise (the "Monthly Ancillary Service Charge"). As provided in Section 3.3, LIPA shall provide the Fuel required to operate the Generating Facilities for the purpose of providing Ancillary Services and, accordingly, there will be no charge for Fuel pursuant to this Agreement. Genco may include the Monthly Ancillary Services Charge as a separate line item on the Monthly Variable Charge invoice.

**5.1.4 *Monthly Capacity Payment Adjustment Charge.*** The Monthly Capacity Payment Adjustment Charge (the "Monthly Capacity Payment Adjustment Charge") will provide for (a) LIPA's payment to Genco of non-variable related expenses, net of insurance proceeds, that could not reasonably be forecasted and included in the Monthly Capacity Charge and are substantially outside the control of Genco, including extraordinary uninsured damage from storms and other acts of God, Catastrophic Failure of one or more units of a Generating Facility as provided in Section 13.1, and environmental compliance costs of a fixed nature as provided in Section 4.2 (for events that were not planned for and not of a type covered by any contingency in the applicable budget), (b) any applicable true-up adjustments as set forth in Appendix A, (c) Ramp Down and Repowering Payments as set forth in Articles 10 and 11, and (d) other similar payments as provided in this Agreement. The foregoing charges shall not include any capital expenditures required as a result of such events, which shall be included in rate base, subject to approval by LIPA as provided in Article 6. Genco may include the Monthly Capacity Payment Adjustment Charge as one or more separate line items on the Monthly Capacity Charge invoice.

**5.1.5 *Monthly Variable Payment Adjustment Charge.*** The Monthly Variable Payment Adjustment Charge (the "Monthly Variable Payment Adjustment Charge") will provide for the payment of starts, fired hours of gas turbine base and peak mode operation, and fuel swaps defined in Appendix B after meeting the threshold levels

established therein and the costs of environmental compliance as provided Section 4.2 (for events that were not planned for and not of a type covered by any contingency in the applicable budget) to the extent not otherwise included in the Monthly Capacity Payment Adjustment Charge or the Monthly RGGI Charge. Charges incurred for starts, fired hours of gas turbine base and peak mode operation and swaps after meeting the threshold levels will be billed (such bills to be complete and in sufficient detail for LIPA to determine the accuracy thereof) in total to LIPA by Genco immediately following the month incurred in accordance with Section 5.3. Genco may include the Monthly Variable Payment Adjustment Charge as one or more separate line items on the Monthly Variable Charge invoice.

**5.1.6 Monthly RGGI Charge.** The Monthly RGGI Charge shall consist of the charges for RGGI compliance determined in accordance with Section 9.3.

**5.2 Performance Guarantees.** Any penalty payments incurred by Genco pursuant to the Performance Guarantees set forth in Appendix F hereof will be calculated no less frequently than annually and deducted from the Monthly Capacity Charge.

**5.3 Payment.** Genco will submit a monthly invoice to LIPA for the Monthly Capacity Charge not later than the first (1st) Business Day of the month for Capacity provided during the month, consistent with the provisions in Section 5.1. Genco will also submit monthly invoices to LIPA for the Monthly Variable Charge, and any other charges that may be required, by the fifth (5th) Business Day following the month of service, consistent with the provisions in this Article 5. Payment of the Monthly Capacity Charge invoiced amounts shall be due and payable by LIPA on the later of the tenth (10th) Business Day of the month or ten (10) Business Days after LIPA's receipt of the monthly invoice. Payment of the Monthly Variable Charge invoiced amounts and any other invoices shall be due and payable by LIPA on the later of the first (1st) Business Day following the nineteenth (19th) of the month or ten (10) Business Days of LIPA's receipt of such invoices.

All such payments shall be made in the form of immediately available funds by wire transfer to a bank or financial institution specified by Genco or in such other form as may be reasonably requested by Genco. The wired funds will be deemed timely paid if received by the close of business on or before the due date of such payment.

**5.4 Late Payment.** Any undisputed invoiced amount not paid by LIPA by the due date thereof will bear interest from the invoice due date at the Default Interest Rate. Disputed amounts ultimately determined to be payable to Genco shall bear interest from the invoice date at the Default Interest Rate.

## ARTICLE 6

### BUDGETS

**6.1 Operations and Maintenance Budget.** Genco shall annually prepare and submit to LIPA no later than ninety (90) days prior to the beginning of each Contract Year an operations and maintenance budget for such year. Such budget shall be submitted for informational purposes only and shall not require or be subject to LIPA approval.

**6.2 Five Year Capital Improvement Budgets.** Genco shall annually prepare and submit to LIPA not less than one hundred eighty (180) days prior to the beginning of each Contract Year a preliminary five (5) year capital improvement plan (including total estimated costs of each capital project and projected plant closures) for LIPA's review to enable LIPA to prepare and forecast Capacity charges under this Agreement. Genco shall annually prepare and submit to LIPA not less than ninety (90) days prior to the beginning of each Contract Year a final proposed five (5) year capital improvement plan (a "Five Year Capital Improvement Plan") for LIPA's review. Each Five Year Capital Improvement Plan shall, among other things, consist of a proposed budget for the upcoming Contract Year (a "Contract Year Capital Budget Plan") and preliminary plans for each of the four (4) succeeding Contract Years. The Five Year Capital Improvement Plan shall also include Genco's forecast of allocated service company net utility plant for the same period, together with an explanation of the reason(s) for any projected increases or decreases to such plant. For the Contract Year Capital Budget Plan applicable to the immediately upcoming Contract Year, Genco shall provide sufficient technical and financial justification for each planned capital expenditure as would be required by Prudent Utility Practice or as LIPA may otherwise reasonably require. Such Contract Year Capital Budget Plan shall justify to LIPA's reasonable satisfaction that each expenditure is required to maintain legal and regulatory compliance, personnel and public safety, electric system or GU reliability, or improve plant efficiency. In support of the foregoing, Genco shall provide a detailed explanation of the purpose and need for each proposed project in the Contract Year Capital Budget Plan and a benefit/cost analysis for all reliability or efficiency projects, justifying each such project by the economic benefits such project is expected to produce over the remainder of the Term.

**6.3 Budget Review.** LIPA shall review each Contract Year Capital Budget Plan and may approve all or any portion of the proposed capital expenditures in its sole discretion and in accordance with Prudent Utility Practice. As soon as reasonably practicable following LIPA's receipt of the proposed Contract Year Capital Budget Plan from Genco, LIPA shall provide Genco with any requested changes, additions, deletions or revisions as well as requests for any additional information and level of detail LIPA believes reasonably necessary to conduct its review. The Genco Representative and LIPA Representative will employ reasonable efforts to agree upon each Contract Year Capital Budget Plan as promptly as possible following LIPA's receipt of any additional information it has requested from Genco. Notwithstanding the foregoing, LIPA may approve individual projects so that work can proceed thereon during the budget review process. Genco will request a target approval date for each project contained in the Contract Year Budget Plan based on its engineering, procurement and implementation schedule; LIPA will use its reasonable efforts to approve or disapprove of each project by the target approval date. The approved expenditures (a "Contract Year Capital Budget") shall be effective throughout the Contract Year, subject to modifications as provided in Section 6.5. It is the intent of the Parties that the amounts provided in each approved Contract Year Capital Budget for capital expenditures will be sufficient to enable Genco to meet or surpass the Performance Guarantees set forth in Appendix F and to otherwise maintain the Generating Facilities in good working order consistent with Prudent Utility Practice; provided that LIPA shall have the final right, subject to Section 6.4, to determine whether Genco should proceed with specific capital projects.

**6.4 Failure To Adopt Contract Year Budget.** If the Parties are unable to reach agreement concerning all or any portion of a Contract Year Capital Budget as contemplated in

Section 6.3, those portions of the Contract Year Capital Budget that are in dispute for such Contract Year shall be resolved pursuant to the dispute resolution provisions set forth in Article 20. Those portions of the Contract Year Capital Budget not in dispute, however, shall become effective, and Genco shall be entitled to proceed during the pendency of dispute resolution proceedings with any disputed capital expenditure projects that it believes are required to maintain legal compliance, personnel and public safety or electric system reliability.

**6.5 Capital Improvement Budget Performance.** Genco will promptly notify LIPA when the cost of any approved capital project is anticipated to increase or actually increases by more than ten (10%) percent. Genco will provide to LIPA, on a quarterly basis, a reasonably detailed report of actual and projected total capital improvement costs (capital plus removal) versus the total approved capital budget. For approved projects with budgets greater than \$250,000, such report shall include a detailed explanation outlining any projected variations that exceed +/- 10% of total project budget. Upon not less than thirty (30) days written notice to Genco, LIPA may, in its sole discretion, suspend or terminate any such capital improvement project which LIPA deems to have exceeded a reasonable cost, in which case LIPA shall reimburse Genco for its approved expenditures and related reasonable wind down costs incurred in connection with such project. Genco will promptly notify LIPA when an event occurs, or is anticipated to occur, which would result in any required unbudgeted capital expenditures. As soon as practical, Genco will provide an explanation and estimate of such unforeseen incremental costs to LIPA in accordance with the information requirements set forth in Section 6.2 as well as National Grid U.S. Sanctioning procedures. LIPA will review and respond to such explanation within sixty (60) days after receipt of the request and all reasonably required supporting information. If the Parties are unable to reach agreement, the dispute shall be resolved pursuant to the dispute resolution provisions set forth in Article 20.

## ARTICLE 7

### GENERATING FACILITY SITES

**7.1 Interference Compensation.** In the event that LIPA's construction or operation of a new generating unit at a Generating Facility Site materially interferes with either the physical operation of the Generating Facility on that site or with Genco's environmental compliance with respect to that Generating Facility, LIPA shall compensate Genco for the additional costs and losses which Genco directly incurs as a result of such interference.

**7.2 Generating Facilities.** During the Term, except for any Generating Facility which has been Ramped Down, Repowered or retired and then only subject to the provisions of Articles 10, 11 and 13 hereof, respectively, Genco may not sell or otherwise assign or dispose of all or any part of the Generating Facilities or any interest therein except for (i) liens securing bona fide debt or other encumbrances incurred in the ordinary course of business or (ii) capital leases unless LIPA shall have given its prior written consent thereto, which LIPA may grant or withhold in its sole discretion.

**7.3** [Reserved].

**7.4 Interconnection.** The Parties shall take such actions and execute such agreements and other documents as may be necessary or appropriate to provide for the continued interconnection

of the Generating Facilities to the T&D System in accordance with LIPA's Tariff for Electric Services, NYISO Rules and FERC requirements ("Interconnection Agreements"). The Parties will cooperate with one another to assure compliance with the testing and calibration requirements for the relays that interconnect the GUs to the T&D System. LIPA will reimburse Genco pursuant to Section 5.1.4 as applicable, for any LIPA or NYISO charges incurred by Genco under the Interconnection Agreements for construction and operation of transmission reinforcements required by NYISO or LIPA to maintain Capacity Resource Interconnection Service for the Delivery of Electricity from the Generating Facilities onto the T&D System.

**7.5 Excluded Units.** In consideration for excluding the E.F. Barrett IC Unit 7 and the Montauk Diesel Units 2-4 (collectively, the "Excluded Units") from the Capacity which LIPA is purchasing hereunder, LIPA shall pay to Genco an amount equal to the aggregate Net Book Value of the Excluded Units as of May 28, 2013, plus the Demolition and Site Remediation Costs applicable to each Excluded Unit as then reasonably estimated by the Parties. LIPA shall take such actions as necessary to make the Montauk Diesel Units 2-4 Retirement Eligible as of May 3, 2013. Genco shall provide LIPA with balance sheets (together with supporting documentation in reasonable detail) showing the Net Book Value of each Excluded Unit as of February 28, 2013, and LIPA shall pay Genco a lump sum amount equal to such aggregate February 28, 2013 Net Book Value, plus such estimated Demolition and Site Remediation Costs, not later than May 28, 2013. As promptly as practicable after May 28, 2013, Genco shall provide LIPA with updated balance sheets (together with supporting documentation in reasonable detail) showing the Net Book Value of each Excluded Unit as of May 28, 2013. Not later than thirty (30) Business Days after LIPA's receipt of the May 28, 2013 balance sheets and supporting documentation, LIPA shall pay Genco the amount, if any, by which the May 28, 2013 aggregate Net Book Value is greater than, and Genco shall refund to LIPA the amount, if any, by which the May 28, 2013 aggregate Net Book Value is less than, the February 28, 2013 aggregate Net Book Value of the Excluded Units. Notwithstanding the foregoing, if LIPA provides Genco with written notice within such thirty (30) Business Day period that LIPA objects to the final Net Book Value calculation, the matter shall be resolved pursuant to the dispute resolution provisions set forth in Article 20. If the actual Demolition and Site Remediation Costs are less than the estimated amount paid by LIPA, then Genco shall refund the difference to LIPA within ten (10) Business Days following the documentation thereof. Genco, however, shall be responsible for and shall bear any Demolition and Site Remediation Costs in excess of the Parties' estimate.

## **ARTICLE 8**

### **STORM RESTORATION**

**8.1 Storm Declaration.** A storm restoration condition shall be deemed to exist when LIPA requests Genco personnel to assist in restoring storm caused damage to the T&D System. LIPA shall promptly notify Genco of a storm restoration condition.

**8.2 Responsibility During Storm Condition.** Personnel designated by Genco (in its sole discretion) will be made available to perform storm restoration duties for LIPA upon LIPA's request, as contemplated above; provided, however, that Genco will follow the same storm restoration practice currently followed by Genco to make Genco employees available. LIPA will pay for the incremental costs incurred by Genco in providing storm restoration services in

accordance with this Agreement; personnel costs will be paid in accordance with Genco's personnel salary scale (including any overtime premiums) consistent with the personnel salary cost basis used to establish fixed operation and maintenance costs in the Capacity Charge in accordance with this Agreement. LIPA will also coordinate and pay any incremental costs related to storm restoration training (e.g., car lease, equipment, meals, etc.). This cost will be reimbursed by LIPA either through an adjustment in the Monthly Variable Charge as contemplated herein or through another mutually agreed-upon method.

**8.3 Termination of Obligation.** Genco's obligations pursuant to this Article 8 shall cease to be effective as of the expiration date of the current term of the Amended and Restated Management Services Agreement, as amended, dated as of January 1, 2006.

## ARTICLE 9

### ENVIRONMENTAL CONSIDERATIONS

**9.1 Environmental Compliance.** Genco shall comply in all material respects with all Applicable Laws including all Applicable Laws regulating or affecting any spill, discharge, or release of any Hazardous Substances into or upon any of its land, air, surface water, ground water, or improvements located thereon and shall take all action required (including any investigation, study, sampling and testing, cleanup, removal and remediation) by Governmental Authorities having jurisdiction to remedy any notice of violation or non-compliance issued by such entity, with regard to air emissions, water discharges, noise emissions, hazardous discharges, or any other environmental, health, or safety problems affecting the Generating Facilities. LIPA will reimburse Genco for all reasonably incurred costs, including those related to any Legal Proceedings, related to such compliance pursuant to Sections 5.1.2 and 5.1.4. Genco's liability to LIPA for nonperformance of this Section 9.1 shall be limited to liabilities under Article 19, and its recoverability from LIPA for environmental compliance to the extent allowed under Article 19 shall be limited to the extent set forth in Article 19.

**9.2 NOx, SOx and CO2 Emission Credits/Allowances.** Genco shall apply to the Generating Facilities all NOx, SOx and CO2 and other air emission and other environmental credits and allowances owned by Genco or otherwise attributable to the Generating Facilities. The cost of such credits or allowances, if any, shall be recovered without markup as set forth in Section 4.2. In the event Genco wishes to sell or otherwise dispose of any credits or allowances, the cost of which has not been charged to LIPA and which Genco reasonably determines are in excess of those needed for the operation of the Generating Facilities, Genco shall give written notice thereof to LIPA as far in advance as reasonably practicable so that LIPA may submit a bid to purchase such credits or allowances should it desire to do so. Genco shall pay LIPA sixty-seven (67%) percent of the proceeds from any sale or other disposition of such excess credits and Genco shall be entitled to retain the remaining thirty-three (33%) percent thereof. If Genco is incorrect in its foregoing determination, Genco shall be responsible for any difference between the sale price and the replacement price; provided, however, that LIPA shall be responsible for two-thirds (2/3) of the cost of the replacement credits or allowances at their original sale price. Sales of emission credits or allowances created or saved as a result of the turbine upgrades and new emission controls at the Northport and Port Jefferson Generating Facilities shall be treated in the manner set forth in Appendix A. If Genco wishes to sell or otherwise dispose of any

credits or allowances (including RGGI allowances as provided in Section 9.3), the cost of which has been charged to LIPA, and which Genco reasonably determines is in excess of the credits or allowances reasonably needed for the operation of the Generating Facilities, then one hundred (100%) percent of the proceeds from such sale or disposition shall be credited to LIPA under this Agreement. As promptly as practicable, but in any event within thirty (30) days after any sale or disposition, Genco shall provide LIPA with a statement in reasonable detail setting forth the calculation of the sale proceeds.

**9.3 RGGI.** With respect to Genco's compliance with the Regional Greenhouse Gas Initiative ("RGGI"), Genco, either directly or through an agent, shall purchase RGGI allowances for the Generating Facilities' participation in quarterly auctions and through secondary market purchases. Genco shall purchase RGGI allowances pursuant to the procedures set forth in Appendix J. LIPA shall reimburse Genco for the costs of such purchases pursuant to Section 9.1.

## ARTICLE 10

### CAPACITY RAMP DOWN

**10.1 Capacity Ramp Down Option.** During the Term, LIPA shall have the right, exercisable in its sole discretion, to reduce ("Ramp Down") all or any portion of Generating Facility capacity which LIPA is obligated to purchase from Genco pursuant to the terms of this Agreement as provided in this Article 10.

**10.1.1 Exercise of Option.** LIPA may exercise its Ramp Down option ("Ramp Down Option") with respect to any (but not a portion) of the blocks of Genco Steam GU capacity set forth in Section 10.1.3 below (each a "Ramp Down Capacity Block") with such Ramp Down to be effective on (but not earlier than) or at any time after the date corresponding to such Ramp Down Capacity Block ("Ramp Down Effective Date"). LIPA may also exercise its Ramp Down Option with respect to any or all of the other Generating Facilities subject to this Agreement ("Other GUs") to be effective, at any time on (but not earlier than) or at any time after May 1, 2015 (other than the Glenwood IC Units 1-3 which LIPA may Ramp Down to be effective on or after May 1, 2014). The effective exercise of the Ramp Down Option shall be subject to LIPA's making the Ramp Down Payment to Genco as provided in Section 10.3. Notwithstanding the foregoing, no Ramp Down of a Steam GU or Other GU shall become effective unless and until the Steam GU or Other GU in question is Retirement Eligible.

**10.1.2 Notice.** In order to exercise its Ramp Down Option, except as otherwise provided in Section 11.11(c)(i), LIPA must give written notice to Genco for a Steam GU not later than two (2) years prior to the Ramp Down Effective Date designated in such notice; with respect to any or all of the Other GUs, LIPA may exercise its Ramp Down Option at any time upon not less than one (1) year's prior written notice to Genco (each a "Ramp Down Notice"). Each Ramp Down Notice shall identify the Ramp Down Capacity Block or the Other GU, as the case may be, which LIPA elects to Ramp Down and the Ramp Down Effective Date of the Ramp Down. LIPA may rescind a



Ramp Down Notice at any time up to (x) twelve (12) months prior to the designated Ramp Down Effective Date for a Steam GU and (y) six (6) months prior to the designated Ramp Down Effective Date for an Other GU; provided, however, that if LIPA rescinds a Ramp Down Notice, it shall reimburse Genco for Genco's demonstrated, reasonably incurred direct costs related to the rescinded Ramp Down.

**10.1.3 Ramp Down Capacity Blocks.** LIPA may exercise its Ramp Down Option with respect to the following Ramp Down Capacity Blocks of Genco Steam GUs as follows:

Ramp Down Capacity Block	Units	Earliest Ramp Down Effective Date
1	Barrett Units 1 and 2	May 1, 2016/18*
2	Port Jefferson Units 3 and 4	May 1, 2016/18*
3	Northport Unit 1	May 1, 2021
4	Northport Unit 2	May 1, 2021
5	Northport Unit 3	May 1, 2021
6	Northport Unit 4	May 1, 2021

\* LIPA may exercise its Ramp Down Option, at its election, for either the Barrett or Port Jefferson Ramp Down Capacity Blocks (but not both) with a Ramp Down Effective Date beginning May 1, 2016, and both such Blocks with a Ramp Down Effective Date beginning May 1, 2018.

**10.2 Obligations Post-Ramp Down.** Following LIPA's exercise of its Ramp Down Option with respect to a Generating Facility, the related rights and obligations of the Parties shall be as follows:

**10.2.1 Capacity Purchase.** From and after the Ramp Down Effective Date on which a Generating Facility is Ramped Down, except as provided under Section 10.2.2(b), LIPA shall have no further right or obligation to purchase or pay for Capacity from, or the associated costs of, that Generating Facility pursuant to this Agreement for the remainder of the Term, and the Ramped Down Generating Facility shall be removed for all purposes from this Agreement (and the Capacity and other charges hereunder shall be appropriately adjusted as provided elsewhere herein) for the remainder of the Term.

**10.2.2 Genco Ramp Down Elections.** Not later than ninety (90) days following its receipt of a Ramp Down Notice, Genco shall provide LIPA with written notice

whether after the Ramp Down Effective Date Genco will either (i) continue operation of the Generating Facility or (ii) shut down and either mothball or demolish the Generating Facility commencing on the Ramp Down Effective Date.

(a) If Genco elects to continue operation of the Ramped Down Generating Facility following the Ramp Down Effective Date:

(i) LIPA shall have no further liability or obligation from and after the Ramp Down Effective Date for any Demolition and Site Remediation Costs in connection with any demolition and site restoration associated with the Generating Facility or the related site, operation and maintenance costs, capital improvements, environmental compliance and remediation costs, property taxes or other costs, expenses or liabilities arising from and after the Ramp Down Effective Date;

(ii) For any given Contract Year during the Term, LIPA shall be entitled to receive fifty (50%) percent of the amount of any Excess Profits earned by the Ramped Down Generating Facility from its operation during such Contract Year; provided, however, that LIPA's entitlement to its share of such Excess Profits shall not be applicable until Genco has first recovered an amount of Excess Profits equal to the amount of any discount deducted from the otherwise applicable Ramp Down Payment made with respect to such Generating Facility pursuant to Appendix G; and

(iii) LIPA shall be also entitled to fifty (50%) percent of any amount of net proceeds (after related transaction costs), including proceeds attributable to any Regulatory Rights received by Genco from any sale, transfer or other disposition of the Generating Facility during the Term, which proceeds are in excess of an amount equal to (x) the Generating Facility's Net Book Value after giving effect to the Ramp Down Payment, plus (y) the amount of any discount previously deducted from the applicable Ramp Down Payment with respect to such Generating Facility pursuant to Appendix G; that Genco has not previously recovered in Excess Profits generated by the Generating Facility pursuant to subparagraph (ii) above.

(b) If Genco elects to shut down and mothball or demolish the Generating Facility as of the Ramp Down Effective Date, then, except for the LIPA Property Tax Share for which LIPA shall be solely responsible, Genco shall retain all liabilities and obligations with respect to the Generating Facility, including with respect to decommissioning, mothballing, Demolition and Site Remediation Costs and property taxes. LIPA shall have the right, exercisable upon written notice to Genco not less than one-hundred eighty (180) days prior to the Ramp Down Effective Date, to purchase the Generating Facility including the related site and all Regulatory Rights for \$1 (in addition to the Ramp Down Payment) and upon such purchase assume all liabilities and obligations, including for property taxes related to the Generating Facility, with respect thereto from and after the Ramp Down Effective Date. Alternatively, if LIPA does not exercise its purchase option, LIPA shall (i) have the option to purchase the Regulatory Rights at their fair market value as agreed upon by the Parties if the Generating Facility has been removed from service and

permanently retired and (ii) be entitled to fifty (50%) percent of the net proceeds (after transaction costs), including any proceeds attributable to Regulatory Rights, received by Genco from any sale, transfer or other disposition of the Generating Facility made during the Term in excess of the Generating Facility's Net Book Value, after (x) giving effect to the Ramp Down Payment and (y) deducting the amount of any discount to the Ramp Down Payment made with respect to the Generating Facility pursuant to Appendix G, and (z) deducting Genco's actual demonstrated costs of decommissioning, mothballing, and Demolition and Site Remediation Costs.

(c) If following the Ramp Down of a Generating Facility, LIPA exercises either (i) its purchase option under paragraph (b) above or (ii) its right to purchase the site on which the Generating Facility was located pursuant to Schedule F to the Merger Agreement ("Schedule F Rights"), LIPA may, among its other rights, elect to contract with a third party, or Genco, to repower or otherwise construct new generation on such Ramped Down Generating Facility site; provided, however, that with respect to the Steam GUs, the Holtsville CT Units 1-10, and the Barrett CT Units 1-6, 8, and 9-12 only (each a "Restricted Generating Facility"), if LIPA wishes to initiate a repowering of such Ramped Down Generating Facility during the three (3) year period commencing with the Ramp Down Effective Date, LIPA shall employ the Repowering Option procedure as provided in Article 11; provided further, however, that such three (3) year restriction shall in no event apply to any Restricted Generating Facility which is Ramped Down following a Repowering suspension or termination pursuant to Section 11.11.

(d) In the event LIPA exercises its Schedule F Rights, LIPA shall pay to Genco an amount equal to the higher of (i) Genco's documented Demolition and Site Remediation Costs and (ii) the fair market value of the Generating Facility site LIPA is acquiring, determined in accordance with LIPA's Schedule F Rights.

**10.3 Ramp Down Payment.** The Ramp Down Payment for each Steam GU and for each Other GU shall be the Net Book Value of the Generating Facility as of the Ramp Down Effective Date of its Ramp Down (a) less the applicable discount as provided in Appendix G, (b) plus an amount equal to the operating and maintenance expenses (both allocated and direct) for (x) eighteen (18) months in the case of a Steam GU and (y) one (1) year in the case of an Other GU, but in each case only until the end of the Term or the Early Termination Date, whichever shall first occur.

At LIPA's election, it may pay Genco the Ramp Down Payment in either (a) a lump sum on the Ramp Down Effective Date or (b) installments over the remaining Term of this Agreement, together with interest at Genco's Weighted Cost of Capital, to the extent the payment obligation is not offset against the then available Tracking Account balance.

**10.4 Ramp Down Tracking Account.** A notional account ("Tracking Account") is hereby established in the amount of the Net Book Value of the Northport Unit 1 Generating Facility (including for the avoidance of doubt, the Net Book Value of the Turbine Upgrades and New Emission Controls – as such upgrades and controls are defined in Appendix A – of the Northport Unit 1) as of May 28, 2013. Genco shall provide LIPA with its calculation (together with workpapers and other supporting documentation in reasonable detail) of such Net Book Value

not later than July 1, 2013. LIPA shall notify Genco within thirty (30) Business Days following receipt of the Net Book Value calculations whether LIPA agrees with or objects to any aspect thereof. In the event LIPA notifies Genco of an objection, unless the Parties are able to resolve LIPA's objections within thirty (30) Business Days, the matter shall be submitted for dispute resolution pursuant to Section 20.3. Should LIPA elect to either Ramp Down, Repower or retire a Generating Facility as provided in this Agreement, LIPA shall be entitled to apply the amount of the Tracking Account to offset the amount of the related Ramp Down Payment, Repowering Payment or Retirement Payment, as the case may be, otherwise payable to Genco hereunder to the extent of the remaining balance in the Tracking Account, but not in excess of the amount of Ramp Down Payment, Repowering Payment or Retirement Payment being applied. The Tracking Account may only be utilized as an offset or credit against LIPA's Ramp Down, Repowering and Retirement Payment obligations hereunder and LIPA shall not have any rights or entitlement to receive distributions therefrom in the event there is a remaining balance in the Tracking Account at the end of the Term or upon the Early Termination Date.

## ARTICLE 11

### REPOWERING OPTION

**11.1 General.** LIPA shall have the option, exercisable at any time during the Term in its sole discretion ("Repowering Option") to direct Genco to repower any or all of the Eligible Repowering Blocks of Generating Facilities in accordance with the process set forth in this Article 11.

**11.1.1 Repowering.** A "Repowering" shall entail among other things, replacing part or all of each GU of a Generating Facility within an Eligible Repowering Block with new generating equipment or entire unit(s) at the selected Eligible Repowering Block site. Depending upon the configuration of the Repowered Generating Facility and other site-specific factors, Repowering of a Generating Facility may commence before the Generating Facility is removed from service. Repowering of the Generating Facility units within an Eligible Repowering Block may be commenced after the expiration of the Term provided that LIPA has exercised its Repowering Option prior to the expiration of the Term. In the event LIPA exercises a Repowering Option, the rights and obligations of Genco and LIPA with respect to the corresponding Repowering shall nevertheless survive the expiration of the Term.

**11.2 Eligible Repowering Blocks.** LIPA may from time to time during the Term exercise its Repowering Option in the manner provided in this Article 11 with respect to any or all of the following capacity blocks of Generating Facilities (each an "Eligible Repowering Block"):

Block 1 – Port Jefferson Steam Units 3 (195 MW) and 4 (197 MW)

Block 2 – E.F. Barrett Steam Units 1 (200 MW) and 2 (196 MW)

Block 3 – Northport Steam Unit 1 (375 MW)

Block 4 – Northport Steam Unit 2 (375 MW)

Block 5 – Northport Steam Unit 3 (375 MW)

Block 6 – Northport Steam Unit 4 (375 MW)

Block 7 – Holtsville CT Units 1-5

Block 8 – Holtsville CT Units 6-10

Block 9 – Barrett CT Units 1-6 and 8

Block 10 – Barrett CT Units 9-12

LIPA's exercise of a Repowering Option must provide for the Repowering of all (and not a portion) of the Generating Facility units within the related Eligible Repowering Block.

**11.3 Repowering Cost Assessment.** Prior to LIPA exercising its Repowering Option with respect to an Eligible Repowering Block, Genco will advise LIPA of the expected capital cost of such Repowering based on the results of a competitive procurement process ("RFP") conducted by Genco for the engineering, equipment procurement, and construction for the Repowering of that Eligible Repowering Block. Genco shall provide LIPA with the results of the RFP and its evaluation thereof as promptly as possible following completion of the RFP process, and in any event within thirty (30) days following the conclusion thereof. At or prior to that time, Genco shall also provide LIPA with proposed terms (including prices) and a proposed form of Power Purchase Agreement ("PPA") for LIPA's review and consideration in order for LIPA to assess whether to exercise its Repowering Option. Genco shall commence the RFP process for Block 1 and Block 2 no later than thirty (30) days following the Commencement Date. The RFP process for the remaining Blocks will only be initiated upon LIPA's written request. It is understood and agreed by the Parties that LIPA's consideration and analysis of whether to exercise a Repowering Option will involve, among other things, a comparison of the total all-in cost of a Repowering, including demolition of the existing facilities on the site, the cost of any necessary restoration, the construction of new facilities (including the cost of transmission upgrades and gas delivery system investments and other PPA payments) as compared to the cost (including the cost of transmission upgrades and gas delivery system investments) of new On-Island generation resources.

**11.3.1 RFP Budget.** Genco shall develop a detailed budget for any incremental internal costs of Genco and third party costs expected to be incurred in the conduct of each RFP. Such budget shall be subject to the mutual agreement of the Parties. LIPA shall reimburse Genco for one-half of the costs incurred and included within the approved budget, and Genco shall be responsible for the balance of such costs as well as any RFP costs incurred in excess of the budget; provided, however, that if the Repowering is completed, LIPA will reimburse Genco for Genco's portion of RFP costs at the time the Repowered Generating Facility is placed in service. The RFP budget may be adjusted by mutual agreement of Genco and LIPA in the event of changes in scope within the RFP.

**11.4 Exercise of Repowering Option.** LIPA may exercise its Repowering Option with respect to an Eligible Repowering Block upon written notice to Genco at any time until the

expiration of (a) the applicable price commitment (as the same may have been extended) contained in the proposal selected in response to the RFP and (b) the expiration of the Term, whichever shall first occur. LIPA's exercise of a Repowering Option shall be subject, however, to LIPA and Genco first reaching agreement on a mutually acceptable PPA and a Retirement Effective Date, as well as consideration by LIPA of such other economic, system resource and other factors as LIPA shall in its sole discretion consider relevant. It is understood and agreed that LIPA shall have no obligation to proceed with exercise of a Repowering Option, which decision shall be in LIPA's sole discretion.

**11.5 Power Purchase Agreement.** For each Eligible Repowering Block for which LIPA proposes to exercise its Repowering Option, LIPA and Genco shall negotiate in good faith and as promptly as practicable enter into a PPA pursuant to which LIPA would agree, upon completion and commercial operation of the Repowered Generating Facility within such Eligible Repowering Block, to purchase the Repowered Generating Facility's capacity, associated energy and ancillary services. LIPA's exercise of a Repowering Option shall be subject, among other things, to execution of a mutually acceptable PPA and receipt of all necessary board and regulatory approvals for the PPA, which regulatory approvals shall be reasonably satisfactory to the Parties.

**11.6 Project Management.** Genco shall serve as the owner and project manager for the Repowering of any Generating Facility repowered pursuant to LIPA's exercise of its Repowering Option. LIPA and Genco shall form a project management committee with equal representation from both Parties. The committee shall monitor all aspects of the Repowering, including demolition, site preparation and any legally required remediation, and the design, construction, equipment procurement and start-up of the Repowered Generating Facility. The Repowering shall be conducted on an "open book" and fully transparent basis with respect to its costs. LIPA shall have full and complete audit rights and its payment obligations shall be consistent with the findings and recommendations and opinions of the audit.

**11.7 Financing.** Genco shall have responsibility for financing the costs of the Repowering which may include third party equity at Genco's discretion. It is anticipated that such financing costs shall be included in the capacity charges to be paid under the PPA.

**11.8 Demolition and Site Remediation Costs.** The Generating Facility within an Eligible Repowering Block to be repowered shall be demolished and the related site shall be remediated, to the extent required by Applicable Law. Genco shall be entitled to recover from LIPA its demonstrated Demolition and Site Remediation Costs over the term of the PPA unless LIPA elects to pay such costs in a lump sum, in which event such costs shall be excluded from the PPA. Genco covenants and agrees to use its commercially reasonable efforts to obtain all available tax credits, credits and governmental support and assistance to offset Demolition and Site Remediation Costs.

**11.9 Repowering Payment.** In the event LIPA exercises a Repowering Option, LIPA shall continue to pay Capacity charges for each Generating Facility within the related Eligible Repowering Block until the Eligible Repowering Block is taken out of service for purposes of the Repowering. An Eligible Repowering Block may not be removed from service pursuant to this Article 11 unless and until it is Retirement Eligible. Upon its exercise of a Repowering

Option with respect to an Eligible Repowering Block, LIPA shall be obligated to make a repowering payment ("Repowering Payment") to Genco equal to the Net Book Value of the Generating Facility to be Repowered as of the date of its removal from service for purposes of being Repowered, less any applicable discount as provided in Appendix G hereto. At its election, LIPA may make the Repowering Payment to Genco in either (a) a lump sum on the date the Generating Facility is removed from service, or (b) in installments over such period under the PPA as the Parties shall mutually agree, together with interest thereon at Genco's Weighted Cost of Capital. LIPA may, however, utilize any remaining balance in the Tracking Account as an offset to a Repowering Payment obligation.

**11.10 Federal and State Repowering Incentives.** In the event of the enactment of Federal or New York State legislation providing tax or other economic incentives or benefits for repowering electric generating stations, LIPA shall be entitled to, and Genco shall pass through to LIPA under the PPA, the full benefit of such incentives applicable to any Repowered Generating Facility under this Agreement. Genco shall use commercially reasonable efforts to obtain the benefits of such incentives.

**11.11 Termination; Make Whole Payments.**

(a) LIPA shall have the right, exercisable in its sole discretion, to suspend or terminate a Repowering upon written notice to Genco at any time as hereinafter provided. In the event LIPA suspends or terminates a Repowering of a Generating Facility prior to completion of the Repowering, LIPA shall reimburse Genco for (x) Genco's out-of-pocket costs incurred from unaffiliated, third-party contractors and consultants, including contract termination, wind-down and decommissioning costs and (y) Genco's documented incremental internal operation and maintenance costs, in each case incurred solely in support of Repowering (and not otherwise recovered under this Agreement), together with any unreimbursed costs of Genco incurred in conducting the RFP. Genco shall use its commercially reasonable efforts to mitigate all such contract termination, wind-down and decommissioning costs. The related Demolition and Site Remediation Costs jointly agreed to and incurred following LIPA's exercise of the Repowering Option shall be paid by LIPA subject, however, to reimbursement by Genco from the net proceeds of any future sale or other disposition of the Generating Facility assets and related site to a third party or to a Genco Affiliate during the Term.

(b) Genco may upon written notice to LIPA elect to suspend or terminate a Repowering at any time, in which event Genco shall remain responsible for all project-related Demolition and Site Remediation Costs and development costs and expenses. Any such notice shall describe in reasonable detail the technical, economic, legal or regulatory developments which, in Genco's good faith judgment, have caused the Repowering to no longer be practical.

(c) If either Party suspends or terminates a Repowering, then, in such event:

(i) If the Generating Facility has not yet been shut down, LIPA may, at its option, either (x) direct that the Generating Facility continue operating

under the terms of this Agreement or (y) Ramp Down the Generating Facility with a Ramp Down Effective Date of not earlier than the applicable Ramp Down Notice period for such Generating Facility as set forth in Section 10.1.2 or the planned retirement date under the Repowering plan for such Generating Facility, whichever shall last occur; provided, however, that notwithstanding the foregoing (1) the Ramp Down Effective Date may in no event occur sooner than the earliest date for Ramp Down of the relevant Capacity Block set forth in Section 10.1.3, and (2) if a Repowering termination notice is given more than one (1) year following LIPA's exercise of its Repowering Option pursuant to Section 11.4, then the Ramp Down Notice periods shall be reduced to one (1) year for a Steam GU and six (6) months for an Other GU. LIPA shall notify Genco which such option LIPA has elected either (i) together with its notice to suspend or terminate the Repowering or (ii) within sixty (60) days following LIPA's receipt of written notice from Genco suspending or terminating the Repowering, as the case may be.

(ii) If the Generating Facility has already been taken out of service, the Generating Facility shall be deemed to have been Ramped Down six (6) months following its shut down date. LIPA shall continue to have the obligation to make the Repowering Payment pursuant to Section 11.9 to the extent not already paid and shall have such rights and obligations (other than to make a Ramp Down Payment) with respect to such Generating Facility as would be applicable with respect to a Ramped Down Generating Facility under this Agreement; provided, however, that LIPA's purchase option as provided in Section 10.2.2(b) shall extend for one hundred eighty (180) days from the date it either (i) notifies Genco to terminate the Repowering or (ii) receives Genco's written notice terminating the Repowering, as the case may be.

## ARTICLE 12

### PROPERTY TAXES

**12.1 General; LIPA Property Tax Share.** With respect to any Generating Facility that (x) LIPA has exercised its option to Ramp Down during the Term and Genco has elected to shut down and mothball or demolish, (y) is retired due to a Catastrophic Failure or Legal Compliance as provided in Section 13.1 and Section 13.2, respectively, or (z) for which a Repowering is terminated, as described in Section 11.11, LIPA and Genco shall bear the ongoing property taxes as follows (unless LIPA exercises its option to purchase the Ramped Down, retired or proposed to be Repowered Generating Facility in which case LIPA shall be responsible for all property tax payments from and after the Ramp Down Effective Date or the Retirement Effective Date, as the case may be):

(a) With respect to a Steam GU, LIPA shall be responsible for reimbursement of the property taxes paid by Genco attributable to (i) the remainder of the Calendar Year in which the Ramp Down Effective Date or the Retirement Effective Date, as the case may be, occurs, and (ii) for the succeeding three (3) Calendar Years thereafter or until the end of the Term or the Early Termination Date, whichever shall first occur;



(b) With respect to an Other GU, LIPA shall be responsible for reimbursement of the property taxes paid by Genco attributable to (i) the remainder of the Calendar Year in which the Ramp Down Effective Date or the Retirement Effective Date, as the case may be, occurs, and (ii) for the succeeding two (2) Calendar Years thereafter or until the end of the Term or the Early Termination Date, whichever shall first occur (LIPA's obligations pursuant to paragraphs (a) and (b) being the "LIPA Property Tax Share"); and

(c) Genco shall be responsible for one hundred (100%) percent of the property tax payments attributable to a Generating Facility which has been Ramped Down, retired or for which a Repowering has been terminated, in each case beginning with the day following the date on which the LIPA Property Tax Share obligation terminates.

(d) Responsibility for the payment of aggregate property taxes with respect to each Generating Facility Site and the Generating Facility and other improvements located thereon shall be allocated between the Parties responsible for payment of such property taxes pursuant to subsections (a), (b) and (c) above on the one hand and any other owners of property located at the Generating Facility Site (including the Parties) on the other hand using the methodology set forth in Appendix K hereto.

(e) The tax allocation methodology to be employed pursuant to subsection (d) and set forth in Appendix K shall continue to apply to the allocation between the Parties of property taxes for the former Glenwood and Far Rockaway generating facility sites.

**12.2 Tax Challenges.** Genco shall, where appropriate, file challenges to the property tax assessments for each Generating Facility as of the commencement of the Term of this Agreement and shall prosecute such challenges diligently and in good faith. Genco shall consult with LIPA prior to entering into any settlement of a property tax challenge which may reasonably be expected to affect LIPA property tax payment obligations hereunder. Genco shall refund to LIPA its allocable share of any reduction of LIPA's property tax payments made with respect to a Generating Facility resulting from a successful challenge. Recognizing that such challenges may extend beyond the time frames covered by the LIPA Property Tax Share period, the Parties agree to share the reasonable costs of prosecuting such challenges on an equitable basis based on the benefits accruing to each Party.

## **ARTICLE 13**

### **RETIREMENT**

**13.1 Retirement Upon Catastrophic Failure.** In the event of a Catastrophic Failure of a Generating Facility, Genco shall as promptly as practicable determine the actions necessary to restore the Generating Facility to safe and reliable service. Genco shall submit to LIPA, as promptly as practicable under the circumstances, a proposal for capital repairs and other actions necessary to so restore the Generating Facility to safe and reliable service in accordance with Prudent Utility Practice. If, following its review of Genco's proposal, LIPA provides written notice to Genco that LIPA does not approve Genco's proposed capital repair expenditure proposal (which LIPA may elect in its sole discretion), Genco shall retire and decommission the

Generating Facility. Upon the effective date of such retirement, which shall be deemed to be two (2) years with respect to a Steam GU and one (1) year for an Other GU, following the date of LIPA's notice or the date it becomes Retirement Eligible, whichever shall later occur (a "Retirement Effective Date"), LIPA shall pay Genco the Ramp Down Payment (less any applicable discount as provided in Appendix G) applicable to such Generating Facility (to the extent the payment obligation is not offset against the available balance in the Tracking Account) and Demolition and Site Remediation Costs and any other necessary costs associated with retiring such Generating Facility (the "Retirement Payment"). LIPA shall also be responsible for the LIPA Property Tax Share with respect to such retired Generating Facility. LIPA at its option may make the foregoing payments (other than payment of the LIPA Property Tax Share which LIPA shall pay when invoiced by Genco) to Genco immediately following the decision to retire such Generating Facility or in accordance with a mutually agreeable installment payment schedule over the remaining Term of this Agreement, including interest at Genco's Weighted Cost of Capital. Alternatively, LIPA shall have the option, exercisable upon written notice to Genco not later than sixty (60) days following LIPA's notification to Genco to retire the Generating Facility, to purchase the Generating Facility for \$1 (in addition to the applicable Ramp Down Payment) and assume all such Demolition and Site Remediation Costs and other liabilities and obligations, including property taxes, with respect to such retired Generating Facility.

**13.2 Retirement For Legal Compliance Requirements.** Genco shall promptly advise LIPA at any time that Genco determines that capital improvements to a Generating Facility are required in order for the Generating Facility to comply with existing or newly adopted environmental and/or other applicable legal requirements. In such event, Genco shall provide LIPA with a detailed analysis and assessment of such compliance requirements and their applicability to the Generating Facility, the capital improvements and costs thereof to achieve compliance with such requirements, and the costs of adopting alternative courses of action. If, after review of Genco's assessment, LIPA notifies Genco that LIPA does not wish to proceed with Genco's proposed capital expenditures to bring such Generating Facility into compliance (which LIPA may elect in its sole discretion), Genco shall proceed to retire and decommission the Generating Facility on a mutually agreeable date, but in no event later than the date on which the Generating Facility would cease to be in compliance with such applicable legal requirements or earlier than the date when the Generating Facility is Retirement Eligible. In such event, as provided in Section 13.1, LIPA shall be obligated to make the Retirement Payment, be responsible for the LIPA Property Tax Share and have a purchase option with respect to such Generating Unit.

## ARTICLE 14

### METERING

#### 14.1 Electric Metering.

**14.1.1 Electric Metering Equipment.** Genco at its own expense (but subject to cost recovery through rates pursuant to Article 5) shall own, test, operate and maintain industry standard revenue meters and instrument transformers; shall install metering mounting equipment; shall install and maintain a dedicated datalink for telemetry purposes to measure

electricity Delivered to LIPA by Genco. Such equipment (the "Metering Equipment") shall be procured, tested, installed, operated and maintained by Genco, or Genco's designee, in accordance with Prudent Utility Practice. LIPA shall not breach the integrity of the wiring or instrument transformers for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring Electricity Delivered from Genco ("LIPA's Metering Equipment").

**14.1.2 Testing of Metering Equipment.** Genco shall test the Metering Equipment for accuracy every two (2) years or at any time within thirty (30) days after a written request by LIPA if LIPA reasonably believes the metering measurement accuracy of the Metering Equipment is inaccurate by two (2%) percent. At LIPA's option, such tests may be witnessed by a LIPA representative. Metering measurement accuracy between ninety eight (98) and one hundred and two (102%) percent shall be deemed acceptable. In the event any Metering Equipment is found outside the acceptable limits of accuracy specified in the prior sentence, it shall be immediately repaired, calibrated or replaced. Upon completion of any examination, maintenance, repair, calibration or replacement of any Metering Equipment, such equipment shall be, sealed by Genco.

**14.1.3 Meter Reading.** Meter readings shall be conducted every month or as otherwise mutually agreed by the Parties.

**14.1.4 Metering Inaccuracies.** When, as the result of a test pursuant to Section 14.1.2, the Metering Equipment is found to be inaccurate by more than two (2%) percent or the Metering Equipment is otherwise functioning improperly, the correct amount of Electricity Delivered to LIPA for the period during which such inaccurate measurements were made, shall be determined as follows:

(a) Genco and LIPA may mutually agree to use the readings of LIPA's Metering Equipment, if any, to calculate the correct amount of Electricity Delivered. LIPA shall furnish the most recent test and calibration documentation for LIPA's metering equipment. If LIPA's meters are utilized, an adjustment for transmission and transformation losses shall be made to such meter readings, as applicable; and

(b) If LIPA's Metering Equipment has not been installed, or if it is found to be unacceptable, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty (50%) percent of the time between the last meter reading and the discovery of the inaccuracy.

## **14.2 Gas Metering.**

**14.2.1 Gas Metering Equipment.** LIPA at its own expense and in accordance with the LDC's gas tariffs shall arrange for the LDC to own, operate and maintain industry standard revenue grade meters to measure gas fuel delivered to the Generating Facilities by the LDC on behalf of LIPA (the "LDC Gas Metering Equipment") and Genco at its own expense (included in the charges provided in Article 5) shall own, operate and maintain industry standard

meters to measure natural gas transported to each of the gas-fueled GUs as needed to measure natural gas consumption or verify Generating Facility gas consumption measured by the LDC Gas Metering Equipment (the "Genco Gas Metering Equipment"). All such equipment shall be installed, operated and maintained by the LDC or Genco, as the case may be, in accordance with prudent gas utility practice. LIPA shall not breach the integrity of the wiring or piping for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring gas delivered to the Generating Facilities ("LIPA's Gas Metering Equipment").

**14.2.2 Testing of LDC Gas Metering Equipment.** Genco shall cooperate with the LDC's testing of the LDC Gas Metering Equipment which the LDC may perform periodically or at LIPA's request. At LIPA's option, such tests shall be witnessed by a LIPA representative. Metering measurement accuracy between ninety-eight (98%) percent and one-hundred two (102%) percent shall be deemed acceptable. In the event any such LDC Metering Equipment is found outside the acceptable limits of accuracy as set forth in the immediately preceding sentence, Genco shall cooperate with the LDC in the immediate repair, recalibration or replacement of such LDC Metering Equipment. Upon completion of any examination, maintenance, repair, recalibration or replacement of any such LDC Gas Metering Equipment, Genco shall seal such equipment.

**14.2.3 Gas Meter Reading.** Meter readings shall be conducted each month during the Term, or as otherwise mutually agreed by the Parties.

**14.2.4 Gas Metering Inaccuracies.** When, as the result of a test pursuant to Section 14.2.2, the LDC Gas Metering Equipment is found to be inaccurate by more than two (2%) percent or the LDC Gas Metering Equipment is otherwise functioning improperly, the correct amount of natural gas delivered to the affected Generation Facility for the period during which such inaccurate measurements were made, shall be determined as follows:

(a) Genco and LIPA may mutually agree to use the readings of Genco's or LIPA's Gas Metering Equipment, if any, to calculate the correct amount of natural gas as delivered. Genco or LIPA, as the case may be, shall furnish the most recent test and calibration documentation for its Gas Metering Equipment. Adjustments for supercompressibility (following AGA standards) and base pressure should be made to such meter readings, as applicable.

(b) If neither Genco's nor LIPA's Gas Metering Equipment can provide accurate measurements for the period in question, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty (50%) percent of the time between the last meter reading and the discovery of the inaccuracy.

**14.3 Oil Fuel Measurement.** Genco will perform monthly Fuel oil tank gauging to determine the amount of Fuel oil in storage at each Generating Facility. The gauging will occur on a pre-determined date prior to the end of the month. Usage from the gauging date

until the last calendar day of the month will be calculated based on the average monthly Heat Rate at each Generating Facility and the actual generation between the gauging date and the end of such month. This calculated amount will be subtracted from the oil in storage on the gauging day to determine the oil in storage on the last day of the month. Fuel oil deliveries during each month will be measured at the time of delivery. The difference between the oil in storage at the beginning and end of the month will be added to the oil deliveries received during the month to calculate the net oil consumed for the month, in accordance with the current methodology of calculating Generating Facility Fuel oil consumption. The Parties recognize and agree that changes in Generating Facility operation may necessitate mutually agreeable modifications to the foregoing procedure. Upon reasonable advance notice to Genco, LIPA may independently gauge Fuel in the oil tanks. Genco shall provide LIPA with such reasonable access and cooperation as LIPA may require for this purpose.

## **ARTICLE 15**

### **DESIGNATION OF REPRESENTATIVES**

**15.1 LIPA Representative.** Within five (5) Business Days after the execution of this Agreement, LIPA shall select a Representative ("LIPA Representative") to act for and on behalf of LIPA on all matters concerning this Agreement for which LIPA has authorized the Representative to act. LIPA will advise Genco as to the scope of such authorization. LIPA shall promptly notify Genco in writing of LIPA's Representative selection and any subsequent replacement thereof.

**15.2 Genco Representative.** Within five (5) Business Days after the execution of this Agreement, Genco will select a Representative ("Genco Representative"), subject to LIPA's approval, who will act for and on behalf of Genco in all matters concerning this Agreement for which Genco has authorized such agent to act. Genco shall advise LIPA of the scope of such authorization. Genco shall promptly notify LIPA in writing of Genco's Representative selection and any subsequent replacement thereof.

## **ARTICLE 16**

### **REPORTS**

**16.1 General.** Not later than twenty (20) Business Days following the end of each month, Genco shall submit to LIPA a report summarizing for the preceding month the Energy Delivered and Fuel burned for all Generating Facilities, together with such other available performance indicators as LIPA may reasonably request. In addition, not later than twenty (20) Business Days following the end of each calendar quarter, in conjunction with the quarterly Capital Budget report required by Section 6.5, Genco shall report to LIPA on the status of maintenance on the Generating Facilities and such other information as LIPA may reasonably request.

**16.2 O&M Reports.** Genco shall provide LIPA with such information, documents, materials and periodic (but not less often than annually) reports as LIPA shall reasonably request with respect to the direct operation and maintenance costs incurred by the Generating Facilities and Genco shall provide other related financial information, including workpapers and other supporting documents, which LIPA determines are

necessary or appropriate for LIPA to verify or confirm components of the Capacity Charge. In addition, Genco shall prepare and provide LIPA with an annual report detailing Genco's actual operation and maintenance costs for each Generating Facility and comparing such costs, including variance explanations, to the Contract Year operation and maintenance budget. Such report shall be prepared in the same format as Genco submits for ratemaking purposes, and shall also reconcile such operation and maintenance costs with the costs Genco reports on its FERC Form 1.

**16.3 Other Information.** Upon LIPA's reasonable request, Genco shall promptly submit to LIPA any other information in Genco's possession concerning the Generating Facilities, including information regarding (a) projected short and long term maintenance schedules and costs, (b) planned Capacity improvements and capital additions to the Generating Facilities, including environmental compliance modifications and (c) Fuel usage. If such requested information is not in Genco's possession, Genco will obtain and prepare such information, to the extent possible, and LIPA shall be responsible for all additional reasonable costs incurred to obtain and prepare such information.

**16.4 Litigation; Permit Lapses.** Promptly upon becoming aware thereof, each Party shall provide the other Party with written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (a) any material litigation, claims, disputes or actions actually filed, or any material litigation, claims, disputes or actions which are threatened, concerning, in each case, this Agreement or the Generating Facilities; (b) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to, the granting, renewal or extension of any permit or any material threatened action regarding the same in this Agreement or the Generating Facilities; (c) any dispute with any Governmental Authority relating to this Agreement or the Generating Facilities; and (d) without regard to their materiality, all penalties or notices of violation issued by any Governmental Authority relating to this Agreement or the Generating Facilities.

## ARTICLE 17

### GENERAL SERVICE REQUIREMENTS

#### 17.1 General Service Requirements.

**17.1.1 Standard of Performance.** In performing its obligations under this Agreement, Genco shall operate in accordance with Prudent Utility Practice and all Governmental Rules and shall seek to minimize costs in accordance with Prudent Utility Practice and Governmental Rules.

**17.1.2 Limitation of Liability.** Genco liability for any failure to comply with Section 17.1.1 shall be limited to the performance penalties provided in Section 3.8, and Appendix F, except as set forth in Article 19.

**17.1.3 Accounting Controls.** Genco shall provide all accounting, booking, and administrative services in connection with all costs received by Genco and charged to LIPA pursuant to this Agreement, such accounting to be consistent with the FERC Uniform System of Accounts and GAAP. In areas of conflict, FERC accounting principles shall apply. All books

and records upon which any rates or charges under this Agreement are based shall be made available by Genco for audit by LIPA.

**17.1.4 Right to Review and Audit.** At any time and from time to time during and until the expiration of six (6) years following the end of the Term, LIPA may, upon reasonable notice and at its own cost, audit (or cause to be audited) Genco's records in connection with any requests for payment and cost reimbursement together with the supporting vouchers and statements, and the calculation of such payments and reimbursements. Each payment made by LIPA hereunder shall be subject to subsequent adjustment for amounts paid that do not constitute costs or charges properly due to Genco or for additional amounts determined to be due to Genco on the basis of such audit. Following the determination that any such payment adjustment is required, the Party required to make payment shall do so within thirty (30) days of the date of such determination.

**17.1.5 Insurance.** Genco shall maintain an insurance program with respect to the Generating Facilities and its activities under this Agreement similar in all material respects to the program described in Appendix L. On or prior to the Commencement Date, Genco shall provide to LIPA certificates of insurance evidencing that Genco has obtained the required coverage set forth in Appendix L. Such certificates shall provide for a minimum of thirty (30) days advance notice to LIPA of any cancellation or material change in such insured coverage.

## ARTICLE 18

### CREDIT ENHANCEMENT

#### 18.1 Credit Enhancement in Certain Circumstances.

**18.1.1 Ownership Maintenance.** Genco hereby covenants and agrees that at all times during the Term of this Agreement it shall remain an Affiliate of the Guarantor.

**18.1.2 Credit Enhancement.** If at any time during the Term, a Material Decline in the Guarantor's Credit Rating should occur, Genco shall immediately notify LIPA's Representative thereof and, within thirty (30) days after such occurrence, Genco shall provide credit enhancement of its obligations hereunder, at its sole cost and expense, in the form either of (1) an unconditional guarantee of all of Genco's obligations hereunder provided by a corporation or financial institution whose long-term senior debt is rated not less than investment grade by at least two (2) of the Rating Agencies in the form of Appendix M hereto, ("Guaranty") or (2) an irrevocable standby letter of credit securing Genco's obligations hereunder in form and substance reasonably acceptable to LIPA, in a face amount of \$4 million provided by a financial institution whose long-term senior debt is rated investment grade by at least two (2) of the Rating Agencies; provided, however, that if LIPA should draw an aggregate of \$2 million on such letter of credit, Genco shall, within thirty (30) days thereafter, supplement or replace such letter of credit with an additional letter of credit such that the total amount of such letter of credit then available equals \$4 million.

**18.1.3 Material Decline in the Guarantor's Credit Rating.** For purposes of Section 18.1.2, a "Material Decline in the Guarantor's Credit Rating" shall be deemed to have occurred under the following circumstances: If (1) Guarantor fails to maintain an investment

grade credit rating from at least two (2) Rating Agencies for its senior long-term debt (or if it has no such securities rated, its corporate credit rating) or (2) in the event the Guarantor does not have long-term senior debt outstanding which has a credit rating by two (2) Rating Agencies or a corporate credit rating from two (2) Rating Agencies, the Guarantor shall seek a credit rating for the Guarantor from two (2) Rating Agencies, and such ratings are not an investment grade rating from at least two (2) Rating Agencies. Notwithstanding the foregoing, a Material Decline in the Guarantor's Credit Rating shall not be deemed to occur so long as the Guarantor maintains a consolidated net worth (stockholders equity) determined in accordance with GAAP, of at least \$500 million and provides evidence thereof as of the end of each calendar year to LIPA's reasonable satisfaction. Genco shall immediately notify LIPA of any Material Decline in the Guarantor's Credit Rating.

## **ARTICLE 19**

### **ALLOCATION OF RISK OF CERTAIN COSTS AND LIABILITIES.**

Except to the extent due to LIPA Fault (as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision), Genco shall be responsible and liable to LIPA for, and shall not be entitled to reimbursement or cost recovery under Article 5 or otherwise from LIPA for any Loss-and-Expense incurred by Genco:

(a) due to any gross negligence or willful misconduct by Genco during the Term in carrying out its obligations hereunder; or

(b) due to any violation of or failure of compliance with Applicable Law by Genco (except as provided below) during the Term which materially and adversely affects

(i) the condition or operations of the T&D System or the Generating Facilities,

(ii) the financial condition of LIPA,

(iii) the performance or ability of Genco to perform its obligations under this Agreement, or

(iv) the cost of providing electric service to the customers of the T&D System,

provided, however, that Genco shall not be responsible or liable to LIPA under this clause (b) with respect to any violation of, failure to comply with, or liability under, Environmental Laws for which LIPA or Genco may be strictly liable provided that Genco acted in a manner consistent with Prudent Utility Practice. Notwithstanding the foregoing, Genco shall in all respects be liable for any fine or penalty arising by reason of any violation of or failure of compliance with Applicable Law for acts or omissions of Genco not consistent with Prudent Utility Practice, or



(c) due to any criminal violation of Applicable Law by Genco; or

(d) due to an event which would otherwise permit recovery of a cost under Section 5.1.4 (Monthly Capacity Payment Adjustment Charge) of an excess capital expenditure under Section 6.5, that is incurred by reason of actions or omissions of Genco not consistent with Prudent Utility Practice.

Any such action or omission identified in (a), (b), (c) or (d) shall be determined by either a final non-appealable order or judgment of a court or regulatory body of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision and shall be attributable to Genco for purposes of the preceding sentence whether it is attributable to Genco or to any officer, member, agent, employee or representative of Genco or any Affiliate and any contractor, subcontractor of any tier.

The provisions of this Article 19 are intended to modify Genco's right to receive payments under Article 5 and Article 9.

## ARTICLE 20

### DEFAULT, REMEDIES AND DISPUTE RESOLUTION

#### 20.1 Events of Default by Genco.

**20.1.1 *Events of Default.*** Each of the following shall constitute an Event of Default on the part of Genco:

(a) Involuntary Bankruptcy. The filing of an involuntary petition under the Federal Bankruptcy Code against either Genco or the Guarantor which petition has not been either dismissed, discharged or stayed within forty-five (45) days after its filing;

(b) Voluntary Bankruptcy. The written admission by Genco or the Guarantor, that it is bankrupt, or the filing by Genco or the Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by Genco or the Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by Genco or the Guarantor of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of Genco's or the Guarantor's property or business;

(c) Credit Enhancement. Failure of Genco to provide and maintain in full force and effect as and when required, the Credit Enhancement as provided in Article 18, which failure has not been cured within ten (10) Business Days;

(d) Change of Control. A Change of Control of either Genco or the Guarantor shall have occurred;

(e) Failure Otherwise to Comply with this Agreement or Any Guaranty. Any failure or refusal by Genco to perform any material obligation under this Agreement or of the Guarantor to perform any material obligation under the Guaranty (in each case other than a payment obligation) which failure or refusal is not otherwise excused by Force Majeure or LIPA Fault and has not been cured within thirty (30) days following receipt of written notice thereof from LIPA; provided, however, that as long as Genco or the Guarantor, as the case may be, is diligently attempting in good faith to cure such failure or refusal and it is reasonably expected that such failure is subject to cure, then Genco or the Guarantor, as the case may be, shall have an additional thirty (30) days to cure such default; and

(f) Failure to Pay or Credit. The failure of Genco or the Guarantor to pay or credit undisputed amounts owed to LIPA under this Agreement or the Guaranty, as the case may be, within forty-five (45) days following the due date for such payment or credit.

#### **20.1.2 LIPA's Remedies for Genco Default.**

(a) Upon the occurrence of an Event of Default by Genco under paragraphs (a) or (b) of Section 20.1.1, this Agreement shall immediately terminate without further action by LIPA.

(b) Upon the occurrence of an Event of Default by Genco under paragraph (c), (d), or (f) of Section 20.1.1, LIPA may terminate this Agreement upon not less than fifteen (15) Business Days written notice to Genco.

(c) Following any other Event of Default by Genco under paragraph (e), LIPA may terminate this Agreement upon not less than ninety (90) Business Days' written notice thereof to Genco provided that Genco or the Guarantor, as applicable, has neither challenged in an appropriate forum LIPA's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days, from receipt of the notice given pursuant to this clause (c) (but if Genco or the Guarantor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as Genco or the Guarantor cures such default within one hundred and twenty (120) days from its receipt of such notice).

#### **20.2 Events of Default by LIPA.**

**20.2.1 Events of LIPA Default.** Each of the following shall constitute an Event of Default on the part of LIPA:

(a) Involuntary Bankruptcy. The filing of an involuntary petition under the Federal Bankruptcy Code against LIPA which petition has not been either dismissed, discharged or stayed within forty-five (45) days after its filing;

(b) Voluntary Bankruptcy. The written admission by LIPA that it is bankrupt, or the filing by LIPA of a voluntary petition under the Federal Bankruptcy Code,

or the consent by LIPA to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by LIPA of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of LIPA's property or business;

(c) Failure to Pay. The failure of LIPA to pay undisputed amounts owed to Genco under this Agreement within forty five (45) days following the due date for such payment; and

(d) Failure to Comply with Agreement. A failure or refusal by LIPA to perform any material obligation (other than a payment obligation as provided in clause (c) above) under this Agreement which failure or refusal is not otherwise excused by Force Majeure and has not been cured within thirty (30) days following receipt of notice thereof from Genco; provided, however, that as long as LIPA is diligently attempting in good faith to cure such failure or refusal and it is reasonably expected that such failure or refusal is subject to cure, then LIPA shall have an additional thirty (30) days to cure such default.

#### **20.2.2 Genco Remedies for LIPA Default.**

(a) Upon the occurrence of an Event of Default by LIPA under paragraphs (a) or (b) of Section 20.2.1, this Agreement shall immediately terminate without further action by Genco.

(b) Upon the occurrence of an Event of Default under paragraph (c) of Section 20.2.1, Genco may terminate this Agreement upon not less than fifteen (15) Business Days written notice to LIPA.

(c) Following any Event of Default by LIPA under paragraph (d) of Section 20.2.1, Genco may terminate this Agreement upon not less than ninety (90) Business Days written notice to LIPA provided that LIPA has neither challenged in an appropriate forum Genco's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than sixty (60) days, from receipt of the notice given pursuant to this clause (c) (but if LIPA shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as LIPA cures such default within one hundred and twenty (120) days from its receipt of such notice).

#### **20.3 Additional Remedies for Breach.**

**20.3.1 General.** Subject to the provisions of Sections 20.3.2 through 20.3.9 and 20.4 hereof, the Parties agree that, in addition to the other remedies they may have under this Agreement, in the event that either Party breaches any obligation under this Agreement or any representation or warranty made by either Party hereunder is untrue in any material respect, the other Party shall have the right to take any action at law or in equity it may have to enforce the payment of any damages recoverable in accordance with this Agreement or the specific performance of such obligation hereunder and such right to recover damages or to be reimbursed

as provided herein will ordinarily constitute an adequate remedy for any breach of such other obligation or any material untruth in any such representation or warranty. Either Party may seek to enforce by an action for specific performance the other Party's obligations hereunder in the event a material breach thereof has occurred and is continuing.

**20.3.2 *Dispute Resolution Negotiation.*** The Parties shall attempt to resolve any Dispute promptly by first referring the Dispute to their respective designated executives having authority to resolve the Dispute. Any Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Within five (5) days after receipt of the notice, the receiving Party shall submit to the other Party a written response. The notice and response shall include a statement of that Party's position and a summary of arguments supporting that position. Within five (5) days after receipt of the initial notice, the Parties' designated senior executives shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deems necessary, to attempt through diligent, good faith negotiations to resolve the Dispute. The Parties' designated senior executives shall endeavor to complete the negotiation process within ten (10) days after the receipt of the Dispute notice. All negotiations and discussions pursuant to this Section 20.3.2 shall be confidential and shall be treated as compromise settlement discussions and negotiations for purposes of Federal Rule of Evidence 408 and any applicable New York state evidence rules and shall not be used or offered as evidence in any subsequent proceeding.

**20.3.3 *Arbitration.*** Any Dispute (other than a Dispute which is subject to the exclusive jurisdiction of the FERC under the FPA) which has not been resolved by negotiation as provided in Section 20.3.2 within twenty (20) days after the receipt of the Dispute notice above shall be finally resolved by binding arbitration within sixty (60) days after the appointment of arbitrators (or as soon thereafter as practicable) in accordance with the CPR Rules for Non-Administered Arbitrations ("CPR Rules") then currently in effect, except to the extent such rules are inconsistent with the terms of this Agreement, in which case the provisions of this Agreement shall govern. Either Party may commence arbitration of a Dispute by delivering written notice in accordance with the CPR Rules to the other Party which includes a statement of that Party's position and a summary of arguments supporting that position. The arbitration shall be conducted by three (3) arbitrators ("Arbitrators") with each Party to designate one (1) arbitrator reasonably experienced in electric power supply matters. The Parties' designated arbitrators are hereinafter referred to as the "Party Appointed Arbitrators." The Party Appointed Arbitrators, within five (5) Business Days of receiving notice of their appointment will select a third arbitrator ("Chair"), who shall be impartial and experienced in electric power supply and related matters. The Chair shall be the chairperson of the panel of Arbitrators. In the event no such agreement can be reached, the CPR Rules shall govern the appointment of the Chair.

**20.3.4 *Provisional Relief.*** Either Party may, without prejudice to any negotiation or arbitration procedures commenced pursuant to Sections 20.3.2 and 20.3.3, proceed in the New York State Supreme Court, Nassau County, to seek to obtain provisional judicial relief if, in the such Party's sole discretion, such action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of such negotiation or arbitration.

**20.3.5 Information Exchange.** The Arbitrators shall have the discretion to order a prehearing exchange of information by the Parties, including production of requested documents, the exchange of witness statements of proposed witnesses, and the examination by deposition of Parties. The Parties hereby agree timely to produce all such information as ordered by the Arbitrators.

**20.3.6 Site of Arbitration.** The site of any arbitration brought pursuant to the terms hereof shall be Uniondale, New York, or such other site as the Parties may agree.

**20.3.7 Awards.** The Arbitrators shall have no authority to award damages other than the prevailing Party's damages specifically recoverable under and subject to the liability limitations provided in this Agreement plus interest at the Default Interest Rate from the date such damages were incurred. The Arbitrators may award reasonable attorneys' fees and costs of the arbitration. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (the "FAA"), and judgment upon the award rendered by the Arbitrators may be entered by any court having jurisdiction thereof.

**20.3.8 Grounds for Judicial Review.** Any award made by the Arbitrators with respect to any Dispute pursuant to the dispute resolution procedures in Section 20.3.3 may be vacated, modified or corrected by a court only on the grounds permitted under the provisions of Sections 10 and 11 of the FAA.

**20.3.9 Submission to Jurisdiction.** Each Party hereto irrevocably submits to the exclusive jurisdiction of any New York State court located in Nassau County and the U.S. District Court for the Eastern District of New York for the purposes of any action to compel arbitration, in aid of arbitration or for provisional relief to prevent irreparable harm or preserve the status quo pending the appointment of the Arbitrators, and agrees to commence any such action only in such courts, except in the case of a termination due to a bankruptcy or insolvency which may be subject to the exclusive jurisdiction of the bankruptcy courts. Each Party further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth herein shall be effective service of process for any such action. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action arising out of this Agreement or the transactions contemplated hereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action brought in any such court has been brought in an inconvenient forum. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION.

#### **20.4 Liability Limitation for Certain Damages.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, NEITHER GENCO NOR LIPA NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, TRUSTEES, MEMBERS, AGENTS, EMPLOYEES OR AFFILIATES SHALL BE LIABLE, WHETHER IN CONTRACT, INDEMNITY, TORT (INCLUDING NEGLIGENCE, GROSS NEGLIGENCE, AND STRICT LIABILITY), OR OTHERWISE, FOR ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHICH ARISE FROM, RELATE TO OR ARE

CONNECTED WITH THIS AGREEMENT OR THE PERFORMANCE OF OR FAILURE TO PERFORM THEIR RESPECTIVE OBLIGATIONS HEREUNDER EXCEPT FOR SUCH DAMAGES PAYABLE TO A THIRD PARTY IN RESPECT OF A THIRD PARTY CLAIM.

## ARTICLE 21

### FORCE MAJEURE

#### 21.1 Force Majeure.

**21.1.1 Events Constituting Force Majeure.** As used in this Agreement, Force Majeure means any act, event, or condition that causes delay in or failure of performance of obligations under this Agreement, or otherwise materially and adversely affects a Party's ability to perform, if such act, event or condition (i) is beyond the reasonable control of the Party relying thereon, (ii) is not the result of the willful misconduct or negligent act or omission of such Party, and (iii) is not an act, event or condition, the risk or consequence of which such Party expressly assumed under this Agreement, including but not limited to:

(a) acts of God, accident, flood, sabotage, fire, epidemic, earthquake, or similar occurrence, act of public or foreign enemy, war and other hostilities, invasion, blockade, insurrection, rebellion, riot and disorder, strikes or labor disturbances, general arrest or restraint of government and people, civil disturbance or similar occurrence; or

(b) entry of an injunctive or restraining order or judgment of any Governmental Authority, if such order or judgment is not the result of the act, or failure to act, of a party or its subcontractors or suppliers; or

(c) suspension, termination, interruption of, or failure to obtain any permit required or necessary for the construction, operation or maintenance of the Generating Facilities, provided such suspension, termination, interruption or failure is not the result of the action or inaction of a Party relying thereon or its subcontractors or suppliers.

Notwithstanding the foregoing, neither the failure of a subcontractor or supplier to perform its obligations to LIPA or Genco, which failure is not itself caused by a Force Majeure event with respect to such subcontractor or supplier, nor financial difficulty suffered by LIPA or Genco or any subcontractor, supplier or vendor in performing its obligations, shall be deemed a Force Majeure event.

**21.1.2 Event of Force Majeure.** Except for the obligations of either Party to make payments of amounts due to the other Party, either Party shall be excused from performance and shall not be considered to be in default in respect of any obligation under this Agreement to the extent that a failure of performance of such obligation shall be due to Force Majeure. If either Party's ability to perform its obligations under this Agreement is affected by a Force Majeure, the Party claiming such inability shall: (i) promptly notify the other Party of such Force Majeure and its cause and confirm the same in writing within five (5) Business Days of discovery of the event or circumstances constituting such Force Majeure; (ii) immediately supply such available information about the event or circumstances constituting the Force Majeure and the cause

thereof as is reasonably requested by the other Party; and (iii) immediately initiate removal of the cause of the Force Majeure or, if immediate removal is not possible, to mitigate the effect thereof.

**21.1.3 Scope.** The suspension of performance due to a Force Majeure shall be of no greater scope and no longer duration than that which is necessary. The excused Party shall use its reasonable best efforts to remedy its inability to perform.

## ARTICLE 22

### PROPRIETARY INFORMATION

**22.1 Confidential Information.** The Parties hereby acknowledge that they may have a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement ("Confidential Information"). Subject to the terms of this Agreement (including the permitted disclosures described below), each Party shall maintain in confidence all Confidential Information provided by the other Party, and shall not disclose such Confidential Information to any third party except to those related parties and subcontractors as are necessary to the disclosing Party's activities under this Agreement, and strictly on a need-to-know basis. In maintaining confidentiality of another Party's Confidential Information, each Party shall exercise the same degree of care that it exercises with its own confidential information and in no event less than a reasonable degree of care.

**22.2 Genco Requests and LIPA Non-Disclosure.** (a) Genco acknowledges that LIPA may be required to disclose information upon request under Applicable Law. Genco shall have the right to request LIPA in writing not to publicly disclose any information which Genco believes to be Confidential Information and not subject to public disclosure under Applicable Law, any such request to be accompanied by an explanation of its reasons for such belief. Any information which is the subject of such a request shall be clearly marked on all pages, shall be bound, and shall be physically separate from all non-proprietary information. At Genco's request, LIPA and its representatives given access to such information shall execute and comply with the terms of a confidentiality agreement in a mutually acceptable form, subject to Applicable Law.

(b) In the event LIPA receives a request from the public for the disclosure of any information designated as Confidential Information by Genco pursuant to paragraph (a) above, LIPA (1) shall use reasonable efforts, consistent with Applicable Law, to provide notice to Genco of the request prior to any disclosure, and (2) shall use reasonable efforts, consistent with Applicable Law, to keep in confidence and not disclose such information unless it is entitled to do so pursuant to the provisions of Section 22.3. Genco shall indemnify, hold harmless and defend LIPA against all Loss-and-Expense incurred from the withholding from public disclosure of information designated as Confidential Information by Genco or otherwise requested by Genco to be withheld.

**22.3 Permitted Disclosures.** Notwithstanding any confidential or proprietary designation thereof by a Party, a Party may disclose the following: (1) information which is known to that Party without any restriction as to disclosure or use at the time it is furnished, (2) information which is or becomes generally available to the public without breach of any agreement,

(3) information which is received from a third party without limitation or restriction on such third party or at the time of disclosure, and (4) following notice to the disclosing Party pursuant to Section 22.2(b), information which, in the opinion of counsel, is required to, be or may be disclosed under any Applicable Law, including the New York Freedom of Information Law, an order of a court of competent jurisdiction, or a lawful subpoena.

## ARTICLE 23

### REPRESENTATIONS AND WARRANTIES

**23.1 Representations and Warranties of LIPA.** LIPA hereby represents and warrants to Genco that:

**23.1.1 Existence and Power.** LIPA is a corporation duly organized and validly existing under the laws of the State of New York and a wholly-owned subsidiary of the Authority. On and after the Commencement Date, LIPA will have full legal right, power and authority to enter into and perform its obligations under this Agreement.

**23.1.2 Due Authorization and Binding Obligation.** LIPA has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by LIPA and on and after the Commencement Date, will constitute a legal, valid and binding obligation of LIPA, enforceable against LIPA in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

**23.1.3 No Conflict.** Neither the execution nor the delivery by LIPA of this Agreement nor the performance by LIPA of its obligations hereunder nor the consummation by LIPA of the transactions contemplated hereby (1) as of the date hereof, conflicts with, violates or results in a breach of any law or governmental regulation applicable to LIPA or as of the Commencement Date will conflict with, violate or result in a breach thereof, or (2) as of the date hereof conflicts with, violates or results in a breach of any term or condition of LIPA's certificate of incorporation or by-laws or of any judgment, decree or material contract, agreement or instrument (including, without limitation, LIPA's organizational documents) to which LIPA is a party or by which LIPA or any of its properties or assets are bound, or constitutes a default under any such judgment, decree or material contract, agreement or instrument.

**23.1.4 No Litigation.** As of the date hereof, there is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Authority pending against LIPA or the Authority or to LIPA's knowledge, threatened against LIPA or the Authority, which if adversely determined to LIPA or the Authority would materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the performance by LIPA of its obligations hereunder.

**23.1.5 No Legal Prohibition.** Subject to the receipt of the required consents set forth in Section 23.1.6, there is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by LIPA of this Agreement and the transactions contemplated hereby.



**23.1.6 No Consent.** No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Authority or any other Person is required in connection with the execution and delivery by LIPA or, as of the date hereof the performance by LIPA of its obligations hereunder except for (i) approval of the New York State Attorney General, (ii) approval of the New York State Comptroller and (iii) acceptance of this Agreement for filing by the FERC under Section 205 of the FPA and the rules and regulations of the FERC thereunder.

**23.2 Representations and Warranties of Genco.** Genco hereby represents and warrants to LIPA that:

**23.2.1 Existence and Power.** Genco is duly organized and validly existing as a limited liability company under the laws of the State of New York, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

**23.2.2 Due Authorization and Binding Obligation.** Genco has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by Genco and constitutes the legal, valid and binding obligation of Genco, enforceable against Genco in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

**23.2.3 No Conflict.** Neither the execution nor the delivery by Genco of this Agreement nor the performance by Genco of its obligations hereunder (1) as of the date hereof conflicts with, violates or results in a breach of any law or governmental regulation applicable to Genco or as of the Commencement Date will conflict with, violate or result in a breach thereof, (2) as of the date hereof conflicts with, violates or results in a breach of any term or condition of Genco's organizational documents or of any judgment, decree or material contract, agreement or instrument to which Genco is a party or by which Genco or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, material contract, agreement or instrument or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Genco.

**23.2.4 No Litigation.** As of the date hereof, other than those which Genco has previously disclosed to LIPA in writing, there is no action, suit or other proceeding, at law or in equity, before or by any court or Governmental Authority, pending or, to Genco's knowledge, threatened against Genco which, if determined adversely to Genco, would materially and adversely affect the validity or enforceability of this Agreement, or which would materially and adversely affect the performance by Genco of its obligations hereunder.

**23.2.5 No Legal Prohibition.** Subject to the FERC's acceptance of this Agreement for filing under the FPA, there is no Applicable Law in effect on the date hereof which would prohibit the execution, delivery or performance by Genco of this Agreement and the transactions contemplated hereby.

**23.2.6 No Consent.** No consent or authorization of, filing with, notice to, or other act by or in respect of any Governmental Authority or any other Person is required in connection with the execution and delivery by Genco or, as of the date hereof, the performance by Genco of its

obligations hereunder other than acceptance of this Agreement for filing by the FERC under Section 205 of the FPA and the rules and regulations of the FERC thereunder.

## **ARTICLE 24**

### **MISCELLANEOUS**

**24.1 Relationships of the Parties.** Except as otherwise may expressly provided in this Agreement, nothing in this Agreement shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create any fiduciary relationship between the Parties.

**24.2 Assignment and Transfer.** This Agreement may be assigned by either Party hereto only with the prior written consent of the other Party, except that: (1) without the consent of Genco (a) LIPA may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in connection with its issuance of revenue bonds to finance its business and operations; and (b) LIPA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other Governmental Authority or to a subsidiary of LIPA or the Authority provided that the successor entity gives reasonable assurances to Genco that it will be able to fulfill LIPA's obligations hereunder; and (2) without the consent of LIPA, (a) Genco may assign its rights, obligations and interests in this Agreement to the Guarantor or any Affiliate thereof, and (b) Genco may sell, assign or transfer a pecuniary interest in any payment, revenues, proceeds, incentive, profits or income derived from this Agreement to any party.

**24.3 Interest on Overdue Obligations.** All amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Default Interest Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by law, be deemed added to the amount due, as accrued. The Parties agree that the Default Interest Rate will apply to payments under this Agreement as specified herein in lieu of any different rate that would otherwise apply generally to late payments by LIPA.

**24.4 Non-Discrimination.** Genco shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex or, with respect to otherwise qualified individuals, disability. Genco will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin or, with respect to otherwise qualified individuals, disability. Such action shall include, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. Genco shall impose the non-discrimination provisions of this Section 24.4 by contract on all subcontractors hired to perform work in connection with this Agreement and shall take all reasonable actions necessary to enforce such provisions. Genco will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Section 24.4.

**24.5 Amendments.** Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by all Parties. Any such amendment hereto shall not be effective until approved by the Office of State Comptroller and the New York State Attorney General and if required under the FPA by the FERC and the rules and regulations of the FERC thereunder.

**24.6 Notices.** Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if sent by registered or certified mail return receipt requested, postage prepaid, by nationally recognized overnight delivery service, signature required upon signed receipt or by facsimile transmission to the following:

If to Genco:                      National Grid Generation LLC  
   c/o National Grid  
   40 Sylvan Road  
   Waltham, Massachusetts 02451  
   Attention: John G. Cochrane, Executive Vice President  
   Facsimile: (781) 907-5772

With copy to:                      National Grid Generation LLC  
   c/o National Grid  
   40 Sylvan Road  
   Waltham, Massachusetts 02451  
   Colin Owyang, Senior Vice President and General Counsel  
   Facsimile: (781) 907-5701

If to LIPA:                        Long Island Power Authority  
   333 Earle Ovington Boulevard  
   Uniondale, New York 11553  
   Attention: Vice President of Power Markets  
   Facsimile No: (516) 222-9137

With copy to:                      Long Island Power Authority  
   333 Earle Ovington Boulevard  
   Uniondale, New York 11553  
   Attention: General Counsel  
   Facsimile No: (516) 222-9137

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party. Notices and communications given by mail hereunder shall be deemed to have been given five (5) days after the date of dispatch; all other notices shall be deemed to have been given upon receipt.

**24.7 Entire Agreement.** This Agreement, together with the appendices, annexes and exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements, understandings, term sheets, proposals, representations or warranties relating to this Agreement.

**24.8 Further Assurances.** Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other Party in order to give full effect to this Agreement. LIPA and Genco, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

**24.9 No Waivers.** No exercise of rights or failure to exercise rights by a Party hereunder shall be construed as such Party's acceptance of any performance that is defective, incomplete, or otherwise not in compliance with this Agreement, as a release of the other Party from any obligation under this Agreement, as an estoppel, or as acceptance of any claim by the other Party. No action of LIPA or Genco pursuant to this Agreement (including, any investigation or payment), and no failure to act, shall constitute a waiver by either Party of the other Party's compliance with any term or provision of this Agreement. No course of dealing or delay by LIPA or Genco in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such Party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of LIPA or Genco under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**24.10 No Third Party Beneficiaries.** Except as specifically set forth herein, neither Party to this Agreement shall have any obligation to any third party as a result of this Agreement.

**24.11 Counterparts.** The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument, and thereafter, each counterpart shall be deemed an original instrument.

**24.12 Negotiated Agreement.** This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against any one Party or the other as the result of the preparation, substitution or other event of negotiation, drafting or execution hereof.

**24.13 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to any applicable principles of conflicts of law that would require this Agreement to be governed by and construed in accordance with the laws of another jurisdiction.

**24.14 Captions; Appendices.** Titles or captions of the articles contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit,

extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof.

**24.15 Non-Recourse.** Except as otherwise agreed, neither Party shall have any recourse against any Affiliate of the other Party, or the successors and assigns of such Affiliate and each Party expressly waives its rights of recourse against, and releases from liability, the other Party's Affiliates. Each Party shall look solely to the other Party, and the assets thereof, to effect recovery of such Party's claims against the other Party.

**24.16 Severability.** The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction, and the Parties hereby agree to negotiate an equitable adjustment to the invalid or unenforceable provisions with a view toward effecting the purposes of this Agreement; the validity or enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.

**24.17 Rules of Interpretation.** The terms and provisions of this Agreement shall be interpreted and construed as follows: (a) words of the masculine gender shall include corresponding words of the feminine or neuter genders and vice versa; (b) the plural shall include the singular and vice versa; (c) unless the context indicates otherwise, all references hereto to Articles, Sections, paragraphs, exhibits, schedules, and Appendices shall refer, respectively, to the Articles, Sections, paragraphs, exhibits, schedules and Appendices of this Agreement; (d) the words "includes" or "including" mean "including, but not limited to" and are not limiting; (e) any reference to any agreement, a contract or any other document means the same as it may be amended, modified, supplemented or replaced from time to time, unless otherwise noted; (f) any reference to a Person includes such Person's successors and assigns; and (g) all references to days are references to calendar days unless specified as Business Days.

**24.18 State Law Requirements.** The provisions set forth in Appendix I relate to requirements imposed upon and/or applicable to LIPA and Genco by New York State law and policies. These provisions are hereby deemed incorporated in this Agreement at this place. To the extent of any conflict between any other provision of this Agreement and Appendix I, Appendix I shall control. Genco shall comply with such terms and conditions during the Term.

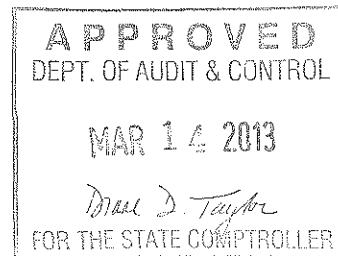
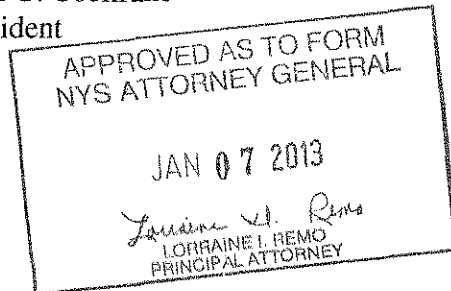
IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

LONG ISLAND LIGHTING COMPANY d/b/a  
LIPA

By: [Signature]  
Name: Michael D. Hervey  
Title: Chief Operating Officer

NATIONAL GRID GENERATION LLC

By: [Signature]  
Name: John G. Cochrane  
Title: President



Commonwealth  
STATE OF Massachusetts )

COUNTY OF Middlesex )

On October 12, 2012 before me personally came John G. Cochrane, to me known to be the individuals described in the foregoing instrument in his/her capacity as President, of National Grid Generation LLC, the New York limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.



Laurie E. Riley  
Notary Public

STATE OF NEW YORK )

COUNTY OF NASSAU )

On October 12, 2012 before me personally came Michael D. Heney to me known to be the individuals described in the foregoing instrument in his/her capacity as Chief Operating Officer, of the Long Island Lighting Company d/b/a LIPA, a New York corporation, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

Lynda Nicolino  
Notary Public, State of New York  
County of Suffolk  
No. 02NI4977085  
Commission Expires Jan. 22, 2015

[Signature]  
Notary Public

**AMENDED AND RESTATED POWER SUPPLY AGREEMENT  
APPENDICES**

Appendix A	Formula Rate
Appendix B	Monthly Variable Adjustment Charge
Appendix C	Generating Facilities
Appendix D	Environmental Compliance Costs
Appendix E	Minimum Loadings, Ramp Rates, Start-Up & Scheduled Shutdown Time
Appendix F	Performance Guarantees
Appendix G	Ramp Down Payment Discounts
Appendix H	Fuel Specifications
Appendix I	LIPA's Standard Contract Clauses: State Law Requirements
Appendix J	Regional Greenhouse Gas Initiative Procedures
Appendix K	Allocation Methodology for Property Taxes at Generating Facility Sites
Appendix L	Insurance Requirements
Appendix M	Form of Guaranty Agreement



## APPENDIX A

### FORMULA RATE

This Appendix provides the manner of setting the Monthly Capacity Charge and the Monthly Variable Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls for each of the Contract Years under the Agreement. The Final Contract Year will be a partial calendar year and the assessment of the then applicable revenue requirement through the Monthly Capacity Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls will be prorated accordingly.

#### I. Monthly Capacity Charge:

A. The Monthly Capacity Charge shall be 1/12th of the annual Capacity Charge. In addition, the Monthly Capacity Charge for the fourth month of each Contract Year after the first Contract Year shall include any true-up adjustment due under Sections III of this Appendix. The Monthly Capacity Charge for any partial months shall be prorated on a daily basis for such month.

B. The annual Capacity Charge for the first Contract Year shall be \$415,293,000. For each Contract Year thereafter, the annual Capacity Charge shall be equal to the prior year's annual Capacity Charge plus the sum of the following adjustments:

- (1) Budgeted Incremental Net Utility Plant, times PTROR;
- (2) Budgeted Incremental Depreciation Expense;
- (3) Labor Cost Index Adjustment (Production);
- (4) Labor Cost Index Adjustment (Support);
- (5) Benefit Cost Index Adjustment (Production);
- (6) Benefit Cost Index Adjustment (Support);
- (7) Rebased property tax amount described in Section III-B below; and
- (8) Rebased pension and other post-employment benefit expenses as described in Section I-G below.

C. Positive adjustments shall be added to the revenue requirement to be collected through the Capacity Charge; negative adjustments shall be subtracted from such revenue requirement.

D. The annual Capacity Charge assumes a federal income tax rate of 35.00% and a state income tax rate of 8.63%, which together equate to an effective combined tax rate of 40.61%. If the statutory federal or state income tax rate changes at any time during the Term, the new tax rates will be automatically incorporated into the formula and the effect of

the statutory change will be reflected in the annual Capacity Charge concurrently with the statutory change.

E. The annual Capacity Charge shall also include property tax expense as set forth in Paragraph III.B. below.

F. The level of federal and state income tax expense included in the cost of service for each Contract Year will reflect a deduction for the cost of removal equal to (\$5.744 million). This amount comprises an amount for removal cost spending of (\$8.621 million) net of an amortization add-back amount of (\$2.877 million) that is reflected in depreciation expense. The net amount of the deduction will be reconciled each Contract Year to the actual removal cost deduction reflected in Genco's calculation of actual federal and state income tax expense which shall consist of the actual removal cost spending net of the actual amortization add back calculated by Genco's tax department. The difference will be multiplied by the Genco effective tax rate for the applicable Contract Year (the effective tax rate set forth in Paragraph 1.D above) and then divided by  $(1 - \text{the effective Genco tax rate})$  to convert the change in the removal cost deduction to a change in revenue requirements. The change in revenue requirements will be added to or subtracted from the Plant Additions True-up calculated in Appendix A, Section III-C below.

G. The Pension and Other Post-Employment Benefit ("P&OPEB") expenses included in the cost of service for the first Contract Year are \$32,995,000, including \$779,000 for 401K match, \$19,804,000 for OPEBs and \$12,412,000 for Pension (based on 2012 P&OPEB expenses; 2013 levels will be determine in June 2013, or as soon thereafter as the actuarial data becomes available). For each Contract Year, the Capacity Charge will be adjusted through a single purpose filing with the FERC in mid-year to reflect the actuarially determined amounts of P&OPEB expense for that Contract Year. Genco shall fund its P&OPEBs at no less than the actuarial expense level to the extent it can do so on a tax-effective basis. The Capacity Charge described in I(B) above does not include the 401(k) plan matching contribution which will be separately billed to LIPA.

H. The Depreciation Rates in the Monthly Capacity Charge, as described in Section VI below, are as set forth in Exhibit 1 to this Appendix.

I. The Capacity Charge shall initially be based on (i) a Genco capital structure consisting of 50% debt and 50% equity and (ii) a Genco cost of debt of 4.72%.

J. This Section I is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.

## II. Monthly Variable Charge:

The Monthly Variable Charge is \$0.90 per MWH of net generation of Genco generating units delivered to LIPA during each month.

### III. True-up Adjustments:

A. In the fourth month following the end of each Contract Year, an annual lump sum surcharge or credit will be due from or to LIPA, as the case may be, for the Tax True-up and the Plant Additions True-up. Plant Additions True-Up surcharges or credits will include a carrying charge calculated as described below. With respect to the Tax True-up portion of the surcharge or credit, the surcharges or credits shall include a carrying charge equal to the Base Interest Rate. The carrying charge will be applied on the full amount of the True-up as of July 1<sup>st</sup> of the Contract Year through the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, interest at Genco's PTROR will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the due date of the lump sum surcharge or credit.

B. The Tax True-up shall be calculated as follows: The base year property tax amount will be \$177,690,000 (based on the escalated property taxes for the Generating Facilities in 2013, subject to update by Genco prior to the Commencement Date; the base amount excludes the property taxes attributable to Far Rockaway and the Glenwood Generating Facilities; the base amount also excludes property taxes for the Glenwood ICs which will be calculated per the allocation methodology set forth in Appendix L to the Agreement and the base amount will be updated to reflect this allocation). The base property tax amount for each Contract Year will be the prior year's property tax amount in base rates increased by 4%, which escalation rate is subject to update by Genco prior to the Commencement Date. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on Genco's books in each Contract Year will be deferred by Genco. This deferred amount inclusive of the carrying charge as described herein will be billed to LIPA in the fourth month following the Contract Year being trued-up.

C. The Plant Additions True-up shall be the sum of:

- (1) Actual Incremental Depreciation Expense (including allocated actual incremental depreciation expense on Service Companies' assets) minus Budgeted Incremental Depreciation Expense (including allocated budgeted incremental depreciation expense on Service Companies' assets);
- (2) Actual Incremental Net Utility Plant (including allocated actual incremental Service Companies' net utility plant) minus Budgeted Incremental Net Utility Plant (including allocated budgeted incremental Service Companies' net utility plant), times (ii) PTROR as defined in section VI below; and
- (3) the amount of any adjustment derived pursuant to Section I-F hereof.

### III. True-up Adjustments:

A. In the fourth month following the end of each Contract Year, an annual lump sum surcharge or credit will be due from or to LIPA, as the case may be, for the Tax True-up and the Plant Additions True-up. Plant Additions True-Up surcharges or credits will include a carrying charge calculated as described below. With respect to the Tax True-up portion of the surcharge or credit, the surcharges or credits shall include a carrying charge equal to the Base Interest Rate. The carrying charge will be applied on the full amount of the True-up as of July 1<sup>st</sup> of the Contract Year through the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, interest at Genco's PTROR will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the due date of the lump sum surcharge or credit.

B. The Tax True-up shall be calculated as follows: The base year property tax amount will be ~~\_\$177,690,000 (based on the escalated property taxes for the Generating Facilities in 2013, subject to update by Genco prior to the Commencement Date)~~ \$169,114,000; the base amount excludes the property taxes attributable to Far Rockaway and the Glenwood Generating Facilities; the base amount also excludes property taxes for the Glenwood ICs which will be calculated per the allocation methodology set forth in Appendix L to the Agreement and the base amount will be updated to reflect this allocation). The base property tax amount for each Contract Year will be the prior year's property tax amount in base rates increased by 4%, which escalation rate is subject to update by Genco prior to the Commencement Date. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on Genco's books in each Contract Year will be deferred by Genco. This deferred amount inclusive of the carrying charge as described herein will be billed to LIPA in the fourth month following the Contract Year being trued-up.

C. The Plant Additions True-up shall be the sum of:

- (1) Actual Incremental Depreciation Expense (including allocated actual incremental depreciation expense on Service Companies' assets) minus Budgeted Incremental Depreciation Expense (including allocated budgeted incremental depreciation expense on Service Companies' assets);
- (2) Actual Incremental Net Utility Plant (including allocated actual incremental Service Companies' net utility plant) minus Budgeted Incremental Net Utility Plant (including allocated budgeted incremental Service Companies' net utility plant), times (ii) PTROR as defined in section VI below; and
- (3) the amount of any adjustment derived pursuant to Section I-F hereof.

D. This Section III is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.

IV. Monthly Capacity Charge For Turbine Upgrades and New Emission Controls:

A. LIPA shall pay a Monthly Capacity Charge for Turbine Upgrades and New Emission Controls equal to 1/12th of the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls for each Contract Year. The Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year shall be the sum of the following costs attributable to the Turbine Upgrades and New Emission Controls, subject to true-up for actual costs as set forth in Section IV.B below:

- (1) Depreciation expense for the Turbine Upgrades and New Emission Controls based on the applicable composite depreciation rate for the related property unit;
- (2) Construction work in progress for the Turbine Upgrades and New Emission Controls will reflect an AFUDC rate of 4.85%, with all such rates reflecting 100% tax exempt debt financing; and
- (3) Net utility plant for the Turbine Upgrades and New Emission Controls will be multiplied by a rate of return of 4.85%, with such rate reflecting 100% tax exempt debt financing;

and provided that recovery of the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for any affected generation unit (except for Northport Unit No. 1 ("Northport 1")) for any Contract Year shall not exceed the Available Fuel and Emissions Savings, which shall be the sum of (a) the Fuel and Emissions Savings attributable to these items during such Contract Year, as calculated in accordance with Section VIII ("Annual Fuel and Emissions Savings"); and (b) any Excess Fuel and Emissions Savings which are the cumulative difference between the Annual Fuel and Emissions Savings from previous Contract Years and the Actual Annual Capacity Charges (including Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls) recovered for such Contract Years ("Excess Fuel and Emissions Savings"). To the extent that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year exceeds the Available Fuel and Emission Savings in such Contract Year, the excess shall be deferred for potential recovery, with the same tax exempt rate of return referred to in Section IV.A.2 above, subject to the procedures set forth in Sections IV.D and IV.E below. The Annual Capacity Charge for Turbine Upgrades and New Emissions Controls at Northport 1 will be computed and assessed without regard to the Available Fuel and Emissions Savings attributable to the Turbine Upgrades and New Emissions Controls installed at Northport 1.

B. At least 60 days prior to the beginning of each Contract Year, a Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls will be calculated in the manner set forth above based on the budgeted level (using a 13 Month Average) of net utility plant for the Turbine Upgrades and New Emission Controls forecast to be included in rate base during such Contract Year (sum of Sections IV.A.1 and IV.A.2 above). The Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls shall be trued-up for such Contract Year based on actual net utility plant costs (using a 13 Month Average), and the same tax exempt rate of return referred to in Section IV.A.2 above shall be applied to the true-up calculation. If such Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is higher than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true-up payment shall be made by LIPA to Genco within four (4) months after the end of such Contract Year. If the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is lower than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true-up payment shall be made by Genco to LIPA within four (4) months after the end of such Contract Year. Any such lump sum true-up payment shall include interest at the above-referenced tax exempt rate of return from July 1<sup>st</sup> of the subject Contract Year until the date of payment.

C. For all affected Generating Units (except Northport 1), upon expiration of each Contract Year, the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year will be compared to the Available Fuel and Emission Savings. In the event that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls exceeds the Available Fuel and Emission Savings, Genco shall refund the difference to LIPA within four (4) months after the end of such Contract Year. Any such refund shall include interest at the above-referenced tax exempt rate of return from July 1<sup>st</sup> of the subject Contract Year until the date of payment, and such difference in Capacity Charges shall be deferred for potential future recovery in accordance with Sections IV.E and IV.F below.

D. In the event that the Available Fuel and Emission Savings exceed the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year, LIPA shall pay the difference, up to the amount of any Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls (defined in Section IV.E below), to Genco within four (4) months after the end of such Contract Year, and such payment shall reduce the Excess Fuel and Emission Savings to be carried over to future Contract Years as well as the Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls that remain subject to future recovery in accordance with Sections IV.E and IV.F below.

E. To the extent that Actual Annual Capacity Charges for Turbine Upgrades and New Emission Controls are not recovered in any Contract Year because they exceed the Available Fuel and Emission Savings for such Contract Year, such unrecovered amount shall



be deferred and accumulated, and referred to as "Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls" (which includes interest at the tax exempt rate of return in Section IV.A.2 above).

F. At the end of the Term, LIPA shall pay to Genco, not later than four (4) months after the expiration of the Term, a lump sum payment equal to the remaining Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls, but only to the extent of the remaining Excess Fuel and Emission Savings.

V. Reopeners:

A. Allowed ROE.

The Monthly Capacity Charge reflects an Allowed ROE of 9.75%. During the Term, Genco and LIPA shall have the right to petition FERC to adjust the Allowed ROE as provided in Section 4.3.

B. Rate Reopener.

Genco may propose a Rate Reopener as provided in Section 4.4 of the PSA Extension. The ROE proposed as part of such Rate Reopener shall not be subject to the provisions governing the Allowed ROE reopener as set forth in Section 4.3 of the PSA.

VI. Definitions:

For purposes of this Appendix A, the following capitalized terms shall have the meaning specified below. Capitalized terms defined in Article 1 of the Agreement shall otherwise apply to this Appendix A.

A. "Accumulated Deferred Federal and State Income Taxes" means the sum of the plant related operating depreciation deferred tax asset or liability reserves as recorded on Genco's and the Service Companies' books and records under the Federal Energy Regulatory Commission Uniform System of Accounts and Generally Accepted Accounting Principles. The phrase "operating depreciation deferred tax asset or liability reserves" refers to the portion of the deferred federal and state income tax asset or liability reserves associated with (1) the difference between (a) the sum of the net tax basis of the plant assets and (b) the net book basis of Genco's and the Service Companies' plant assets, times (2) the statutory federal and state income tax rate.

B. "Approved Net Plant Additions" means aggregate capital additions approved under Article 6 and placed in service, plus capital additions not included in an approved Capital Improvement Budget at the beginning of a Contract Year but later approved by LIPA (but not including cost overruns on items included in a budget approved by LIPA), minus aggregate scheduled retirements.

C. "Actual Incremental Depreciation Expense" means the sum of the 12 monthly calculations of actual Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.

D. "Actual Incremental Net Utility Plant" means the sum of (1) the 13 Month Average of actual Approved Net Plant Additions, minus (2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, and plus (3) the 13-Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.

E. "Base Interest Rate" means the lesser of (1) the maximum rate of interest permitted by Applicable Law and (2)(a) for interest accruing during the first six months after the date on which a payment was payable hereunder, 6 months LIBOR, and (b) for interest accruing more than six months after the date on which a payment was payable hereunder, the prime interest rate plus one percentage point, in each case as six month LIBOR or the prime interest rate as reported in The Wall Street Journal for each day.

F. "Budgeted Incremental Depreciation Expense" means the sum of the 12 monthly calculations for the Contract Year of scheduled monthly Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.

G. "Budgeted Incremental Net Utility Plant" means (1) the 13 Month Average of Approved Net Plant Additions, minus (2) the 13-Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, plus (3) the 13-Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.

H. "Composite Depreciation Rate" means the annual rate to be applied to gross plant to determine annual depreciation expense. The appropriate rate for each item of steam production plant, other production plant, common plant and electric general plant is set forth on the attached Exhibit I.

I. "Defined Labor and Benefits Index" means the percentage change for the twelve month period ending on the preceding September 30 for the Employment Cost Index for wages and salaries, Private Industry, not seasonally adjusted for the Northeast (Service No. CIU20200000002101) as published by the United States Bureau of Labor Statistics.

J. "Labor Cost Index Adjustment (Production)" and "Benefit Cost Index Adjustment (Production)" for each Contract Year means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (Production) for the first Contract Year will be \$49,976,000 and the base year benefit costs (Production) for the first Contract Year will be \$15,421,000. The sum of the prior Contract Year base labor and



benefits costs (production) and the Labor Cost Index Adjustment (production) and Benefit Cost (production) for a year shall be the "prior Contract Year base labor and benefit costs" used for the following Contract Year's adjustment.

K. "Labor Cost Index Adjustment (Support)" and "Benefit Cost Index Adjustment (Support)" for each Contract Year means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (support) for the first Contract Year will be \$9,871,000 and the base year benefit costs (support) for the first Contract Year will be \$3,800,000. The sum of the prior Contract Year base labor costs (support) and benefit costs (support) and the Labor Cost Index Adjustment (Support) and Benefit Cost Index Adjustment (Support) for a year shall be the "prior Contract Year base labor and benefit costs" used for the following Contract Year's adjustment.

L. "PTROR" means pre-tax return on rate base which shall be 10.57% for each Contract Year unless modified pursuant to Section 4.4 or 4.5. PTROR assumes a federal income tax rate of 35 percent and a state income tax rate of 8.63%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be automatically incorporated into the formula and the effect of the statutory change will be reflected into the PTROR concurrently with the statutory change.

M. "13-Month Average" means a monthly average developed by (1) taking the sum of (a) the first through eleventh monthly amounts to be averaged, (b) one-half of the twelfth monthly amount to be averaged, and (c) one-half of the prior year's twelfth monthly amount to be averaged and (2) dividing the sum in (1) by 12.

N. "Service Companies" means Genco's affiliates that provide services to Genco.

O. "Turbine Upgrades and New Emission Controls" means the Dense Pack turbine efficiency improvement systems and related equipment installed at Northport Unit Nos. 1, 2, 3 and 4; and the advanced NO<sub>x</sub> control systems installed at the Northport and Port Jefferson power plants pursuant to the 4<sup>th</sup> Amendment to the original PSA.

## VII. Ramp Down Adjustment:

Nothing herein shall be construed to predetermine the amount to be paid by LIPA to Genco under Article 10 of the Agreement if LIPA exercises its Ramp Down Option. In addition, the Monthly Capacity Charge for the remaining capacity shall be adjusted as a result of the Ramp Down.

No later than July 1, 2013, the Parties will develop a mutually agreeable methodology for computing the amount of any Ramp Down Payment and any prospective adjustment to the Monthly Capacity Charge resulting from a Ramp Down.

### VIII. Methodology for Calculating Annual Fuel and Emission Savings:

The following methodology shall be used to calculate the Annual Fuel and Emissions Savings associated with the Turbine Upgrades and New Emission Controls for purposes of Section IV above.

A. Fuel Savings. In the three-month period preceding the Turbine Upgrade outage, a turbine test will be conducted to determine the turbine efficiency for the unit. Within three (3) months after completion of the Turbine Upgrade, a turbine test will be conducted in accordance with Genco's existing turbine test procedures entitled, "Modified Turbine Test Procedure for Fossil Fueled Steam Generating Units" (current rev. December 7, 2009), to determine the as-modified turbine efficiency. LIPA and its consultants shall have the right to review all test procedures, witness all tests and review and approve all calculations associated with the baseline and as-modified tests, all such approvals not to be unreasonably withheld.

The percentage improvement in turbine efficiency will be multiplied by the overall unit heat rate to determine the BTU/KWh savings attributable to the Turbine Upgrades (e.g., 3% x 10,000 BTU/KWh = 300 BTU/KWh). At the end of each calendar year, the total number of MWh (megawatt hours) generated by the unit will be multiplied by the BTU/MWh savings calculated from the turbine efficiency testing described above to determine the total BTU savings for the year. The total BTUs saved as a result of the Turbine Upgrades will be multiplied by such year's average fuel cost (\$/10<sup>6</sup> BTU) for the unit to determine the annual fuel cost savings.

$$\text{Fuel cost savings} = \text{Total BTU savings} \times \text{Avg Fuel Cost (\$/10}^6\text{ BTU)}$$

B. Emissions Savings – Turbine Upgrades. In order to determine the emissions avoided and emission credits saved as a result of the Turbine Upgrades, the achieved efficiency improvement following the installation of Turbine Upgrades on each Northport unit in BTUs/MWh (as calculated in accordance with Section A) shall be multiplied by the number of MWh produced for the calendar year at such unit and then multiplied by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission rate (in lbs/mmBTU) at such unit as determined by certified Continuous Emissions Monitoring Systems ("CEMs") records divided by 2000 (lbs/ton).

The value of such NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> Emission Savings shall be determined by multiplying the annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission savings in tons from all Northport units modified with Turbine Upgrades by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission credit price for all applicable NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed by the parties.

C. Emissions Savings – New Emissions Controls. In order to determine the effectiveness of, and the emission credit savings attributable to the New Emissions Controls, the NO<sub>x</sub> emission rate in lbs/MWh shall be measured using the plant's certified CEMs before and after the application of the NO<sub>x</sub> control technology on each unit. Such measurements shall be made on both natural gas fuel and fuel oil at the identical steady load over a three-hour period, pursuant to the then in effect Environmental Protection Agency regulations. LIPA and its consultants shall have the right to review all test procedures, witness all tests and confirm all calculations associated with the baseline and as-modified tests. The difference in NO<sub>x</sub> emission rate in lbs/MWh for each fuel at each unit shall be established as the achieved emission rate reduction for each unit and each fuel. The total tons of NO<sub>x</sub> emission avoided and the corresponding emission credits saved each year following the application of NO<sub>x</sub> emission control technology on each shall be calculated as follows at the end of each Contract Year:

Achieved emission rate reduction on gas (lbs/MWh) times the number of MWh produced on gas plus the achieved emission rate reduction on oil times the number of MWh produced on oil divided by 2000 (lbs/ton).

The value of such NO<sub>x</sub> emission savings shall be determined by multiplying the annual NO<sub>x</sub> emission savings in (tons) from all units modified by New Emission Controls by the average annual NO<sub>x</sub> emission credit price for all applicable NO<sub>x</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed upon by the Parties.

D. Annual Fuel and Emission Savings. Annual Fuel and Emission Savings will be calculated as follows:

Sum of the savings from (A) Fuel Savings, (B) Emission Savings - Turbine Upgrades and (C) Emission Savings - New Emission Controls.

Annual Fuel and Emission Savings = A + B + C

IX. Genco Passthrough Costs Recoverable Through Monthly Capacity Payment Adjustment Charge and Monthly Variable Payment Adjustment Charge:

All costs for Genco expenses that are identified in the Agreement as not being included in the Monthly Capacity Charge and Monthly Variable Charge and recoverable through either the Monthly Capacity Payment Adjustment Charge or the Monthly Variable Payment Adjustment Charge shall be billed to LIPA at Genco's actual cost. RGGI compliance costs will be billed to LIPA at Genco's actual cost through the Monthly RGGI Charge.

**EXHIBIT I****DEPRECIATION RATES****STEAM PRODUCTION PLANT**

<b>Account Number</b>	<b>Description</b>	<b>Depreciation Rate (%)</b>
311	Structures & Improvements	3.16
312	Boiler Plant Equipment	3.70
314	Turbogenerator Units	2.75
315	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
	Total Steam Production Plant	3.34

**OTHER PRODUCTION PLANT**

<b>Account Number</b>	<b>Description</b>	<b>Depreciation Rate (%)</b>
341.0	Structures & Improvements	3.16
342	Fuel Holders, Producers & Access	3.70
344.0	Generators	2.75
345.0	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
346.0	Total Other Production Plant	3.34

## COMMON PLANT CATEGORIES

Account Number	Description	Depreciation Rate (%)
303.1	<u>Miscellaneous Intangibles:</u>	
	Capitalized Software:	
	Group 1 - 5 year amortization	20.00
	Group 2 - 7 year amortization	14.28
	Group 3 - 10 year amortization	10.00
	<u>Office Building:</u>	
390.0	Structures and Improvements	2.54
	<u>General:</u>	
391.0	Office Furniture and Equipment	4.39
	Laboratory equipment	2.88
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	<u>3.91</u>
		4.86
	<u>Data Processing:</u>	
391.0	Sub-accounts .2 - .8	11.44
	<u>Transportation:</u>	
392.0		8.01
	<u>Stores Equipment:</u>	
393.0		3.79
	<u>General Shops:</u>	
394.0	Tools, shop, and garage equipment	3.40
	<u>Power Operated Equipment:</u>	
396.0		7.87

Note: These common plant depreciation rates are applicable to Genco-owned common plant; depreciation rates for the allocated common plant of Genco affiliates will be subject to periodic adjustment consistent with GAAP.

## ELECTRIC GENERAL PLANT

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390.0	Structures & Improvements	2.42
391.0	Office Furniture and Equipment	11.34
392.0	Transportation Equipment	7.92
393.0	Stores Equipment - Operating Stores	3.80
394.0	Tools, Shop and Garage Equipment	3.15
395.0	Laboratory Equipment	2.71
396.0	Power Operated Equipment	7.90
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	<u>3.79</u>

Total Electric General Plant

## **APPENDIX B**

### **MONTHLY VARIABLE ADJUSTMENT CHARGE**

The following Monthly Variable Adjustment Charges are applicable during the term of the Agreement for start-ups exceeding the annual threshold:

**Table 1A – Start-Up Charges for Steam Units**

<b>Class</b>	<b>Charge Per Start</b>	<b>Annual Threshold</b>
Northport Plant	\$26,431	38
Barrett and Port Jefferson Plants	\$12,500	52

Note: The Charge Per Start numbers are preliminary results from the AER study and remain subject to revision upon completion of the study and the Parties' mutual agreement as to the results of the study.

**Table 2A - Charges for Base Load Operation for Internal Combustion Units**

<b>Class</b>	<b>Charge Per Gross MWH Above Threshold</b>	<b>Annual Threshold (Gross MWH)</b>
Holtsville 1-10 Jets	\$10.38	37,228
Barrett 9-12 Jets	\$13.35	26,399
East Hampton, Shoreham 2 Jets	\$16.39	2,864
East Hampton Diesels	\$9.79	907
Barrett 1-6, 8 Frame 5's	\$18.02	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$18.02	1,334
Glenwood 2&3, West Babylon Frame 7A's	\$7.03	5,723
Shoreham 1 Frame 7A	\$11.57	823
Wading River 1-3 Frame 7EA's	\$4.26	44,664

## APPENDIX B

### MONTHLY VARIABLE ADJUSTMENT CHARGE

The following Monthly Variable Adjustment Charges are applicable during the term of the Agreement for start-ups exceeding the annual threshold:

**Table 1A – Start-Up Charges for Steam Units**

Class	Charge Per Start	Annual Threshold
Northport Plant	<del>\$26,431</del> <u>32,819</u>	38
Barrett and Port Jefferson Plants	<del>\$12,500</del> <u>15,461</u>	52

~~Note: The Charge Per Start numbers are preliminary results from the AER study and remain subject to revision upon completion of the study and the Parties' mutual agreement as to the results of the study.~~

**Table 2A - Charges for Base Load Operation for Internal Combustion Units**

Class	Charge Per Gross MWH Above Threshold	Annual Threshold (Gross MWH)
Holtsville 1-10 Jets	\$10.38	37,228
Barrett 9-12 Jets	\$13.35	26,399
East Hampton, Shoreham 2 Jets	\$16.39	2,864
East Hampton Diesels	\$9.79	907
Barrett 1-6, 8 Frame 5's	\$18.02	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$18.02	1,334
Glenwood 2&3, West Babylon Frame 7A's	\$7.03	5,723
Shoreham 1 Frame 7A	\$11.57	823
Wading River 1-3 Frame 7EA's	\$4.26	44,664



**Table 3A - Charges for MWH Production at Peak Load**

<b>Class</b>	<b>Charge Per Gross MWH</b>
Holtsville 1-10 Jets	\$32.49
Barrett 9-12 Jets	\$40.05
East Hampton, Shoreham 2 Jets	\$49.17
East Hampton Diesels	N/A
Barrett 1-6, 8 Frame 5's	\$54.08
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$54.08
Glenwood 2&3, West Babylon Frame 7A's	\$21.09
Shoreham 1 Frame 7A	\$34.71
Wading River 1-3 Frame 7EA's	\$12.78

**TABLE 4A - Charges for Fuel Swaps**

<b>Individual Units</b>	<b>Fuel Swaps Per Day</b>	<b>Fuel Swaps Per Year*</b>	<b>Cost Per Swap</b>
Northport Unit	1	1-50	No Charge
Northport Unit	2-4	51-200	\$325
Northport Unit	>4	>200	\$4,025
Barrett or Port Jefferson Unit	1-2	1-33	No Charge
185 MW Unit	3-4	34-140	\$110
185 MW Unit	>4	>140	\$1,040

\*As computed in accordance with the procedure below.

**PROCEDURE FOR DETERMINATION OF MONTHLY  
VARIABLE PAYMENT ADJUSTMENT CHARGE**

1. After the end of each calendar month, Genco will submit a report to LIPA which sets forth the actual number of starts for the Steam GUs; hours of operation, MWh energy production, peak hours and MWh for Other GUs (internal combustion units); and number of Fuel Swaps (defined below) for each class of Generating Unit identified in this Appendix B for the preceding calendar month and cumulative for the Contract Year through the preceding calendar month.
2. In each monthly report, Genco will compare the cumulative number of starts per class, MWh of energy production by class or number of Fuel Swaps by unit to the corresponding thresholds presented in this Appendix B.
3. All thresholds except daily Fuel Swap thresholds are annual thresholds. Cumulative actual values used to compare to threshold values will reset to zero annually.
4. If cumulative actual values for number of starts by class, MWh energy production by class, or number of Fuel Swaps by unit is less than or equal to the threshold, no charge will apply for that preceding month.
5. In the first month in which cumulative actual values for number of starts, MWh energy production or number of Fuel Swaps exceeds the threshold, Genco will compute the difference between the cumulative actual value and threshold value, then multiply the difference by the charges presented in the corresponding table in this Appendix B.
6. For each month subsequent to the first month in a given Calendar Year when a particular threshold has been exceeded, Genco shall, to the extent that a particular threshold for a particular GU or class has been exceeded, multiply the actual number of starts in excess of the threshold, MWh energy production or number of Fuel Swaps in that month by the charges set forth in the corresponding table in this Appendix B.
7. For internal combustion GUs, all MWh energy production at peak load will be multiplied by peak load charges as presented in Appendix B without regard to a threshold. Peak load MWh will be calculated by integrating the unit MWh for the actual time period that a unit is in peak operating mode, as required by LIPA's system operator.
8. The actual number of starts shall not include any unit restarts following a forced outage caused by a Fuel Swap. A "Fuel Swap" shall be deemed to have occurred when any Northport or 185MW GU (i) goes from 100% firing of one fuel type to 100% firing of another fuel type (e.g., gas to oil) or (ii) a unit goes from dual fuel to 100% of any one fuel type. A change from 100% fuel firing to dual fuel will not be considered a Fuel Swap.

9. Fuel Swap thresholds per GU have been established on a daily and annual basis. The number of Fuel Swaps used to determine if the annual threshold has been exceeded shall be reduced by any Fuel Swaps exceeding the daily thresholds.

10. These charges will be invoiced to LIPA monthly in accordance with Section 5.1.5 of the Agreement.

## APPENDIX C

### GENERATING FACILITIES

Generating Facilities and Units	Name Plate Rating(MW)
<b>Steam Units</b>	
Northport 1	375
Northport 2	375
Northport 3	375
Northport 4	375
Port Jefferson 3	175
Port Jefferson 4	175
E.F. Barrett 1	175
E.F. Barrett 2	175

Generating Facilities and Units	Name Plate Rating(MW)
<b>Internal Combustion Units</b>	
E. F. Barrett 1-6, 8	126
E.F. Barrett 9-12	167
Holtsville 1-10	567
Wading River 1-3	239
Shoreham 1	53
Shoreham 2	19
Glenwood 1	16
Glenwood 2-3	110
East Hampton 1	21
East Hampton 2-4	6
Northport G-1	16
Port Jefferson G-1	16
W. Babylon 4	52
Southhold 1	14
Southampton 1	12

## APPENDIX D

### ENVIRONMENTAL COMPLIANCE COSTS

1. The following environmental compliance costs shall be recovered through the Monthly Capacity Payment Adjustment Charge:

- (a) The incremental cost of required residual oil storage tank inspections, provided that such tanks are required to remain in service pursuant to Section 3.3; and provided further, that the costs of any non-capital tank repairs and of cleaning tanks being permanently removed from service shall be borne by Genco as part of its fixed operations and maintenance costs, while any related capital repair costs shall be recovered pursuant to Section 6.5.
- (b) Dredging costs (including contractor charges and cost of sand, if required) to comply with regulatory requirements for the intake and discharge channels at the Northport Generating Facility in excess of what Genco would otherwise expect to incur to support normal operations (i.e., the removal of approximately 11,000 cubic yards per year).
- (c) Legal and consultant costs (including Service Companies' labor costs for providing environmental support services) incurred to assess, comply with or challenge regulatory proceedings or compliance requirements associated with cooling water discharge permits, except that such costs incurred in contemplation or furtherance of a capital project required for such compliance shall be included in the cost of the project and recovered pursuant to Article 6.

2. The cost of providing demineralized water for NOx control at the Holtsville and Wading River Generating Facilities shall be recovered through the Monthly Variable Payment Adjustment Charge.

3. RGGI compliance costs shall be recovered through the Monthly RGGI Charge as set forth in Appendix J.

## **APPENDIX E**

### **MINIMUM LOADINGS, RAMP RATES, START-UP & SCHEDULED SHUTDOWN TIME**

**Table 1 Minimum Loadings**

<b>Unit</b>	<b>Minimum Loadings</b>
Northport	100 MW Net
Port Jefferson	40 MW Net
E. F. Barrett	40 MW Net

**Table 2 Ramp Rate**

<b>Unit</b>	<b>Ramp Rates</b>
Northport	4 MW/Minute
Port Jefferson	2 MW/Minute
E. F. Barrett	2 MW/Minute

**Table 3 Start-Up Times**

<b>Unit</b>	<b>Cold&gt;90 hours</b>	<b>Warm</b>	<b>Hot&lt;24 Hours</b>
Northport	30 hours	12 hours	8 hours
Port Jefferson	24 hours	12 hours	8 hours
E. F. Barrett	24 hours	12 hours	8 hours

**Table 4 Minimum Down Time**

Units	Minimum Down Time
Northport	48 Hours
Port Jefferson	48 Hours
E. F. Barrett	48 Hours

**Table 5 Internal Combustion Loading <sup>1</sup>**

Unit	Base Load MW	Peak Load MW
Holtsville 1-5 (CI eng.)	48.0	53.0
Holtsville 6-10 (C1D eng.)	45.6	54.9
Wading River 1-3	74.0	81.0
Southold	12.6	14.5
Port Jefferson	13.9	15.7
East Hampton G.T.	17.0	19.6
East Hampton Diesels 2,3,4	2.0	2.0
Southampton	10.1	11.6
Shoreham-1	41.3	46.5
Shoreham-2	14.0	17.9
Barrett 1-6, 8	14.7	16.5
E. F. Barrett 9-12	36.0	39.2
Glenwood 1	13.9	15.7
Glenwood 2,3	43.7	50.9
West Babylon	41.3	46.5
Northport	13.9	15.7

<sup>1</sup> Ratings listed above are based on operation at an ambient temperature of 80°F. Actual loading limits will be determined by adjusting the values listed above to actual ambient temperature using manufacturers' temperature vs. load curves.

## **APPENDIX F**

### **PERFORMANCE GUARANTEES**

Performance Guarantees will be implemented by measuring Genco's actual performance with regard to (i) the thermal efficiency of the Steam GUs ("Heat Rate Guarantee") and (ii) the unforced capacity ("UCAP") of the GUs ("UCAP Guarantee"). To implement the Heat Rate Guarantee, the Parties will measure the actual fuel consumption of the Steam GUs against an input-output curve for each class of Steam GU. To implement the UCAP Guarantee, the Parties will measure actual system annual UCAP against an aggregate numerical performance level established for the GUs. Genco's unexcused failure to meet such minimum performance levels during a Contract Year will result in financial penalties as described below.

- a. The performance levels for each of the guarantees will initially be as set forth herein and will be subject to reset for the period commencing January 1, 2016 and every three years thereafter (each three-year period a "Measurement Period"), only in the event any penalties were incurred by Genco for a particular guarantee during the immediately preceding Measurement Period. Otherwise, the performance level for each such guarantee shall remain as-is for the next Measurement Period. Performance Guarantees will also be reset in the event of the Ramp Down or Retirement of any GU; and to recognize significant physical modifications to any applicable GU, that are expected to result in an improvement or reduction in performance levels e.g. turbine replacement, cooling towers, etc. In such case, the Performance Guarantee reset will occur in the month following such a Ramp Down or physical modification and will begin to apply in that same month.
- b. Under the Heat Rate Guarantee, Genco warrants that aggregate annual fuel consumption for the Steam GUs will be no greater than the level calculated in accordance with this section. Should such aggregate annual fuel consumption be greater than the guaranteed level, Genco will make a penalty payment to LIPA equal to one-half of the cost of the excess fuel consumed, computed as described below. There will be a maximum annual heat rate penalty of \$1 million (to be pro-rated for the first and last Contract Year of the Term by the number of months in such Contract Year).
  - ii. As described herein, actual fuel consumption and guaranteed maximum fuel consumption will be calculated on a monthly basis for the Steam GUs. Guaranteed maximum fuel consumption for a particular month will be based on an input-output curve for each of the two classes of Steam GUs (Northport and Barrett/Port Jefferson) and the actual dispatch of the Steam GUs during that month.
  - iii. The form of the Heat Rate Guarantee input-output curves and the accompanying criteria to be used in this guarantee are as explained below.



Monthly guaranteed maximum fuel consumption for each Steam GU equals the sum of the hourly maximum guaranteed fuel consumption for all hours in the month that the GU generates at or above its Minimum Dispatch MW (shown in the table below) plus the Allowed DTH/Start multiplied by the number of start-ups in the month that followed outages of at least 24 hours in duration. For each hour during which a Steam GU operates at or above its Minimum Dispatch MW, the hourly maximum guaranteed fuel consumption =  $1.01 * (A + B * MW + C * MW^2) * \text{DOF} * \text{Seasonal Factor}$

Where the parameters are as follows:

- Base coefficients = A, B and C
- Dispatch Operating Factors = DOF
- MW = Actual Net Generation for Hour
- Seasonal Factor = adjustments to compensate for uncontrollable variable: sea water temperature

Unit Class	Base Coefficients			Base DOFs	Allowed	
	A	B	C		Min Disp. MW	DTH/Start
NPT Dense Pack	328.079	8.54110	0.001807	1.0000	20	3030
PJ/EFB	184.015	8.68568	0.004700	1.0130	10	1515

To be updated after installation of NPT 2 Dense Pack, per agreed Dense Pack adjustment methodology

Seasonal Factors (to multiply Base by monthly)					
Jan	Feb	Mar	Apr	May	Jun
0.995	0.995	0.995	0.995	1.000	1.000
Jul	Aug	Sep	Oct	Nov	Dec
1.005	1.010	1.010	1.005	1.000	0.995

- iii. A minimum participation threshold has been established for each Generating Facility Site. Should the monthly net generation for a particular Generating Facility Site be less than the threshold amount for that Generating Facility Site, the Generating Facility Site will not be included in that month's calculation. The minimum participation thresholds are as follows:

Monthly Site Min Gen MWH	
NPT	75,000
PJ	25,000
EFB	25,000

- iv. The Actual Fuel Burn is the sum of actual fuel burns for each participating Generating Facility Site, as determined in paragraph (iii) above, except that actual oil consumption shall be expressed in Gas Equivalent MMBtu by multiplying the MMBtu of oil consumption by 1.04 (the "Gas Conversion Factor") to account for differences in Steam GU efficiency when burning oil versus natural gas.

- v. Each month, a variance shall be calculated as the difference between the aggregate (i.e., sum of all applicable Steam GUs) guaranteed fuel consumption and the aggregate actual fuel consumption. At the end of each Contract Year, the monthly variances (whether positive or negative) shall be added to yield the annual variance. If the annual variance is negative (i.e., the actual fuel consumption exceeds the guaranteed level), the excess fuel cost will be calculated by multiplying the annual variance by LIPA's weighted-average cost (\$/MMBtu) of fuel (both gas and oil, as applicable) for the applicable Steam GUs in the Contract Year.
- c. Genco further guarantees that the aggregate Unforced Capacity (UCAP) of the GU's will be no less than the UCAP Guarantee established for each calendar year. For purposes of both measured and guarantee values, the UCAP of each individual GU will be the product of  $(1 - \text{EFORD})$  multiplied by DMNC (based on a 75/25 summer/winter weighted average). Genco will make a penalty payment to LIPA in the event the measured UCAP is lower than the UCAP Guarantee. The UCAP penalty will be \$60,000 for every MW that the measured UCAP is lower than the UCAP Guarantee, up to the maximum UCAP penalty of \$2 million (to be pro-rated for the first and last Contract Year of the Term by the number of months in such Contract Year).

The UCAP Guarantee for 2013-2015 will be the UCAP calculated utilizing the average actual DMNC results and average actual EFORD results for the three (3) test periods prior to the first Contract Year (2013), less a performance increment of 1.25% of this value. The performance increment will remain at 1.25% for 2014 and will be 1.5% for 2015 and through the remaining term of the contract. If and when the UCAP Guarantee is reset, the guarantee will be based on the average of the most recent 3 prior test periods.

- i. The initial guarantee will utilize actual summer DMNCs, with power recovery where applicable, from the summers of 2010, 2011 and 2012.
  - ii. The initial guarantee will utilize actual winter DMNCs from the winters of 2009-2010, 2010-2011 and 2011-2012.
  - iii. For a given guarantee year, winter DMNC from the period ending in that calendar year will apply.
  - iv. The initial guarantee will utilize EFORDs for the calendar years of 2010, 2011 and 2012, except that such EFORDs will be adjusted to exclude the effect of outages of internal combustion units caused by failure of Remote Starting Capability as a result of a loss of communication lines.
- d. Genco will meet with LIPA on a quarterly basis to report DMNC and EFORD performance status by GU. A formal agenda with supporting documentation will be prepared and followed for each meeting. This agenda will include the analysis and discussion of:
    - i. Year-to-date Actual Winter and Summer DMNC by GU.

- ii. Year-to-date and 12-Month Ending EFORD by GU.
- iii. For GU's that are significantly below their target DMNC (~10% or more), the likely causes of the shortfall will be presented. Suggested remedial actions will be provided for discussion.
- iv. For GU's with higher than desired EFORD, Genco will present the likely causes of the most significant outages and derates that are contributing to the high EFORD. Suggested remedial actions will be provided for discussion.
- v. In general, a 12 month ending EFORD over 7% will be the threshold for a Steam GU requiring analysis, while an EFORD over 35% will be the threshold for any Other GU. Any GU with a significant short term change in EFORD will also be discussed.

In the event that Genco incurs the maximum penalty under any of the Performance Guarantees for all years within a Measurement Period, then the maximum penalty for that Performance Guarantee will be increased by \$1 million for the next Measurement Period. In the event that Genco incurs no penalty under a Performance Guarantee for all years within a Measurement Period, then the maximum penalty for that Performance Guarantee will be decreased by \$1 million for the next Measurement Period; provided, however, in no case shall the maximum penalty for each guarantee be reduced below its original amount (i.e., \$1 million or \$2 million, respectively), except for any pro rating that may apply.

Further computational details will be developed by the Parties as required. The Parties will address any inconsistencies between the administration of the incentive/disincentive mechanisms during Contract Year 15 of the PSA and the administration of the Performance Guarantees during Contract Year 1 of this Agreement.

## **APPENDIX G**

### **RAMP DOWN PAYMENT DISCOUNTS**

In the event LIPA elects to exercise its Ramp Down Option with respect to a Capacity Block as provided in Section 10.1.3 of the Agreement, the Net Book Value included as part of the Ramp Down Payment for such Capacity Block shall be discounted by the percentages set forth below.

<b><u>Year of Ramp Down Effective Date</u></b>	<b><u>Discount Factor</u></b>
Through December 31, 2018	00.0%
2019	12.5%
2020	25.0%
2021	37.5%
2022	50.0%
2023-2028	62.5%

## APPENDIX H

### FUEL SPECIFICATIONS

0.7% Sulfur No. 6 Oil

#### Product (Quality) Specifications

	<u>Specification</u>	<u>ASTM Method of Measurement</u>
Ash, % by Weight, Max.	0.10	D-482
BS&W, % by Vol., Max.	1.0 (1)	D-1796
BTU/Gal.(per Delivery) BTU/Gal.Wgt.Avg.for Contract Period (Calorific Guarantee)	Report	D-240 D-240 (Bomb Method)
Flash Point, Deg. F, Min.	150	D-93
Free Water Test (Before Discharge)	None(2)	Bacon Bomb
Gravity, API at 60 Deg. F. Minimum	8.5 Npt 9.0 Pt.Jeff.	D-287
Hydrogen Sulfide (H <sub>2</sub> S) - Vapor, PPM, Max.	10	Drager Tube
Pour Point, Deg. F, Max.	60 Npt 100 Pt. Jeff.	D-97
Sodium, PPM, Max.	70	D-5863-SoL/DIL
Sulfur, Max. % by wgt.	0.7(4)	D-4294
Viscosity, SFS @ 122°F, Max.	300	D-445/D-2161
SUS @ 100°F, Min.	45	D-445/D-2161

Temperature, Delivered, Deg. F, Min (3)

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.

- (1) If the BS&W (Bottom Sediment and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W in excess of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartiment that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the Northport Delivery Point or the Alternate Delivery Point, the temperature of Product delivered must be no less than 120° F. At the time of Commencement of Discharge at the Port Jefferson Delivery Point, the temperature of Product delivered must be no less than 120° F or 30°F above the pour point, whichever is greater.
- (4) The Product must conform with the Federal EPA New Source Specification for sulfur content in fuel. The sulfur content must not exceed 0.4 pounds per one million BTU's. Fuel Supplier's compliance with the EPA New Source Specifications will be determined by multiplying the actual weight of the Product in pounds per gallon by its sulfur content in percent by weight and dividing the result by the actual BTU's per gallon expressed in millions of BTU's.

Example: (a) 0.7% sulfur by weight

7.578 pounds per gallon (API gravity 24.0)

147,000 BTU per gallon (of delivered Product)

$$\frac{0.007 \times 7.578}{0.147000} = 0.361 \text{ pounds of sulfur per million BTUs (Acceptable)}$$

Example: (b) 0.8% sulfur by weight

7.578 pounds per gallon (API gravity 24.0)

146,500 BTU per gallon (of delivered Product)

$$\frac{0.008 \times 7.578}{0.146500} = 0.414 \text{ pounds of sulfur per million BTU's (Nonconforming)}$$

1.0% Sulfur No. 6 Oil

**Product (Quality) Specifications**

	<u>No. 6 Fuel Oil</u>	<u>ASTM Method of Measurement</u>
Ash %, by wgt. Max.	0.10	D-482
BS&W, %, by vol, Max.(1)	1.0	D-1796
BTU/Gal (Per Delivery)	Report	D-240
BTU/Gal., Wgt. Average for Contract Period(Calorific Guarantee)		D-240 (Bomb method)
Flash Point, Deg.F, Min.	150	D-93
Free Water Test(2) (Before Discharge)	None	Bacon Bomb
Gravity, API, at 60 Deg.F, Min.	8.5 Npt 9.0 Pt.Jeff.	D-287
Hydrogen Sulfide (H <sub>2</sub> S) - Vapor, PPM, Max.	10	Drager Tube
Pour Point, Deg.F, Max.	60 Npt 100 PJ	D-97
Sodium, (ppm), Max 288/74	70	5863-00/IP-288/74
Sulfur, % by wgt. Max.	1.0	D-4294
Viscosity, SFS at 122° F, Max	300	D-445/D-2161
SUS at 100° F, Min.	150	D-445/D-2161
Temperature, Delivered, Deg.F,Min. (3)		

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.

- (1) If the BS&W (Bottom Sediment and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W in excess of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartment that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the Northport Delivery Point or the Alternate Delivery Point, the temperature of Product delivered must be no less than 120°F. At the time of Commencement of Discharge at the Port Jefferson Delivery Point, the temperature of Product delivered must be no less than 120°F or 30°F above the pour point, whichever is greater.



Product Specifications  
 0.37% Sulfur  
 No.6 Residual Fuel Oil

	<u>E. F. Barrett</u>	<u>ASTM</u> <u>Method of</u> <u>Measurement</u>
Ash, % by wgt., Max	0.10	D-482
BS&W, % by vol., Max(1)	1.0	D-1796
Calorific Guarantee BTU/Gal., Contract Period Wtd. Average	Report	D-240 Bomb Method
Flash Point, °F, Min	200	D-93
Free Water Test <sup>(2)</sup> (before discharge)	None	Bacon Bomb
Gravity, API, @ 60°F, Min	10.1	D-287
Max	28.0	D-287
H <sub>2</sub> S - Vapor, ppm, Max.	10	Drager Tube
Pour Point, °F, Max(3)	100	D-97
Sodium, ppm, Max	70	D-5863-SOL/DIL
Sulfur content, % by weight, max.	0.37	D-4294
Viscosity, SFS @ 122°F, Max	300	D-445/D2161
SFS @ 100°F, Min	45	D-445/D2161

Fuel Supplier shall supply Product that is homogeneous hydrocarbon oils, free from contaminants, including but not limited to polypropylene, inorganic acids, excessive amounts of solid or fibrous foreign matter (such as metallic fragments), olefin gas oil, olefin tar bottoms, reclaimed/reprocessed oil, chemical washes and styrenes. Fuel Supplier shall not blend with the Product any waste, reclaimed oil, or any hazardous wastes, as such hazardous wastes are defined in 40 CFR Part 261 and 6 NYCRR Part 371.

- (1) If the BS&W (bottom Sediment, and Water), as reported on the Inspector's discharge quality analysis, is in excess of 0.5%, the quantity of Product delivered will be reduced by the percentage of BS&W of 0.5%.
- (2) Fuel Supplier shall not discharge any Vessel cargo tank/compartments that contains free water. Such water shall be segregated from the Product before Product discharge. Fuel Supplier shall store any and all such water on the Vessel and will be responsible for the proper and legal disposal thereof.
- (3) At the time of Commencement of Discharge at the E.F. Barrett Delivery Point, the temperature of Product delivered must be no less than 120°F or 30°F above the pour point, whichever is greater.

**National Grid Requirements for Kerosene - Barge Delivery  
Holtsville Gas Turbine Site**

	<u>ASTM Method</u>	<u>Specification</u>	
		<u>Min</u>	<u>Max</u>
API Gravity	D4052/D287/1298	37.0	
BTU/lb.	D240/D4809	Report	
BTU/gal.	D240/D4809	Report	
Carbon Residue Ramsbottom 10%	D524		0.15
Cetane Index	D976	40.0	
Color - Dyed Red		Yes / No	
Corrosion, Copper Strip	D130	1A	1B
Dist. IBP Deg. F	D86	325	
10%		348	400
50%		Report	
90%			550
End Point			572
Flash Point, Deg. F	D56/D3828	123	
Freezing Point, Deg. C (F)	D2386		-30 C, (- 22 F)
Lead, Mg/kg (ppm)	D3605		0.5
Particulates, mg/L	D2276/D5452		5.0
Sodium, Mg/Kg (ppm)	D3605		0.6
Sulfur, % by weight	D1266/D2622		0.04
Vanadium, Mg/Kg (ppm)	D3605		0.5
Visc. cSt @ 100 Deg F	D445	1.4	2.2
Water & Sediment, %	D1796/D2709		0.1

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**National Grid Requirements for No. 2 Oil and Ultra Low Sulphur Diesel (ULSD)**

**Applicable Units:**

**Wading River, East Hampton GT and East Hampton Diesel, West Babylon,  
Shoreham GT 1, 2, Glenwood 1, 2, and 3, Port Jefferson 1, Northport APG, EF  
Barrett 1-12**

			<b>ASTM No.</b>		<b>Specification</b>	
					<b>Min.</b>	<b>Max.</b>
API, Gravity			D4052/ D287/1298		30.0	
Ash, % by Weight			D482			0.01
BTU/lb.			D240			Report
BTU/Gal.			D240			Report
Carbon Res. Ramsbottom 10%			D524			0.2
Cetane Index			D976/D4737		40	
Cloud Point, <b>Sep-Mar</b>	C		D2500			-10
	F					+15
Cloud Point, <b>Apr-Aug</b>	C		D2500			-7
	F					+20
Color - Dyed Red						Yes/No
Corrosion, Copper Strip			D130			Class 1B
Distillation	IBP, F		D86			400
	10%, F					
	50%, F					535
	90%, F					650
	End Point, F					700
					135	
Flash Point,	F		D93		F	
Lead	PPM		D3605			0.5
Oxy Stability,	Accel Method		D2274			1.5
	mg/100 ml					
Particulates,	mg/L		D2276			10.0
Pour Point, <b>Sep-Mar</b>	C		D97			-18
	F					0
Pour Point, <b>Apr-Aug</b>	C		D97			-12
	F					+10
Sodium,	PPM		D3605			0.6
Sulfur,	% by weight					
	Wading River, GT	D2622/D4294				0.25
	All Other Sites					0.37
Vanadium,	PPM	D3605				0.5
Viscosity	cST @ 100 F	D445		0.5		4.0
Water & Sediment, %		D1796/D2709				0.1

Report - No specifications to meet are required. Perform test as noted and report results

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**National Grid Kerosene Requirements for:**  
**Units: Southampton GT, Southold GT**

**\* Properties Guaranteed by Colonial 55 grade specifications**

	ASTM Method	Specification	
		Min	Max
* API Gravity	D4052/D287/1298	37.0	
* Ash	D482		0.01
* BTU/lb.	D240/D4809	Report	
BTU/gal.	D240/D4809	Report	
Calcium, (ppm)	D3605		2.0
Carbon Residue,(100% sample)	D524		1.0
* Carbon Residue(10% Ramsbottom)	D524		0.15
* Cetane Index	D976/D4737	40.0	
* Color - Dyed Red***		Report	
* Corrosion, Copper Strip	D130	1A	1B
Demulsification, (minutes)	D1401		20.0
* Dist. IBP Deg. F	D86	325	
10%		348	400
50%		Report	
90%			550
End Point			572
* Flash Point, Deg. F	D56/D93/D3828	123	200
* Freezing Point, Deg. C (F)	D2386		-30 C, (-22 F)
Hydrogen content.%	D1018/D3701/D5291	12.7	
Lead, Mg/kg (ppm)	D3605		0.5
Nitrogen (Fuel- Bound)	D4629/D5762		0.015 % by weight
Particulates, mg/l - (gal to litre - J. Kost 12/01/06)	D2276/D5452		2.6
Sodium, Potassium, and Lithium(Combined),Mg/Kg(ppm)	D3605		0.2
* Sulfur, % by weight	D1266/D2622		0.04
Vanadium, Mg/Kg (ppm)	D3605		0.5
* Visc. cSt @ 100 Deg F	D445	1.4	2.2
Water & Sediment, %	D1796/D2709		0.1

**Notes**

"Viscosity" Colonial 55 spec min is 1.0

Report - No specifications to meet are required. Perform test as noted and report results

\*\*\*Use of any dyes or additives must conform to MIL-S-53021 A.

Rev. 9/25/12

## **APPENDIX I**

### **NEW YORK STATE REQUIREMENTS**

#### **LIPA'S STANDARD CONTRACT CLAUSES: STATE LAW REQUIREMENTS**

##### **Attachment A**

For the purposes of this Appendix A, the Long Island Power Authority and its operating subsidiary the Long Island Lighting Company d/b/a LIPA are hereinafter referred to as "LIPA."

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than LIPA, whether a contractor, consultant, licensor, licensee, lessor, lessee or other party):

**NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of LIPA, and any attempts to assign the contract without LIPA's written consent are null and void. Contractor may, however, assign its right to receive payment without LIPA's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the New York State Finance Law (the "State Finance Law"), if this contract exceeds \$50,000, it shall not be valid, effective or binding upon LIPA until it has been approved by the State Comptroller and filed in his office.

**WORKER'S COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this Agreement shall be void and of no force and effect unless Contractor provides and maintains coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person

per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**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 Contractor'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. Furthermore, Contractor 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 and shall comply with all requirements set forth in Article 8 or Article 9 of the Labor Law whichever Article applies. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 2878 of the Public Authorities Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to LIPA a non-collusive bidding certification on Contractor's behalf.

**INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, Contractor agrees, as a material condition of the contract, that neither Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC app. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**SET-OFF RIGHTS.** LIPA shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, LIPA's option to withhold for the purposes of set-off any moneys due to Contractor under this contract up to any amounts due and owing to LIPA with regard to this contract, any other contract with LIPA, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to LIPA for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. LIPA shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by LIPA, its representatives, or the State Comptroller.

**RECORDS.** Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for six (6) years following the expiration or

earlier termination of the contract. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. LIPA shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) Contractor shall timely inform LIPA in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**DISCLOSURE OF LIPA RECORDS OR INFORMATION.** If any third party requests that Contractor disclose LIPA records or information, as defined in subdivision 4 of section 86 of the Public Officers Law, Contractor shall notify LIPA of such request and LIPA shall determine, in accordance with Chapter 39 of the Laws of 2010, whether such LIPA records or information may be disclosed.

**CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Section 2880 of the Public Authorities Law and the guidelines adopted by LIPA thereto.

**SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of Contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must



meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of Contractor to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the New York Laws of 1992), Contractor hereby stipulates that Contractor either (i) has no business operations in Northern Ireland, or (ii) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Article 165 of, the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St – 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220  
Fax: 518-292-5884  
<http://www.empire.state.ny.us>

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Minority and Women's Business Development Division  
30 South Pearl St – 2<sup>nd</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5250  
Fax: 518-292-5803  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this Agreement, Contractor certifies that:

(b) Contractor has made commercially reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and woman-owned business enterprises, on this Project, and has retained the documentation of these efforts to be provided upon request to the State;

(c) Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(d) Contractor agrees to make commercially reasonable efforts to provide notification to New York State residents of employment opportunities on this Project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(e) Contractor acknowledges that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**RECIPROCITY AND SANCTIONS PROVISIONS.** Contractor is hereby notified that if its principal place of business is located in a state that penalizes New York State vendors, and if the goods or services it offers are substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 amendments (Chapter 684, Laws of 1994) require that Contractor be denied contracts which it would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), LIPA shall not purchase any apparel from any Contractor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) Contractor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with LIPA), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

**PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**CONTINGENT FEES.** Contractor hereby certifies and agrees that (a) Contractor has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any LIPA contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and (b) Contractor will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by LIPA.

**COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law

Section 208). Contractor shall be liable for the costs associated with such breach if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.

**Non-Collusive Bidding Certification**  
**Required by Section 2878 of the Public Authorities Law**

By submission of this bid, bidder and each person signing on behalf of bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

[1] The prices in this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and

[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FOREGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:

**[AFFIX ADDENDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation of partnership.

IF BIDDER(S) (ARE) A PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS

LEGAL RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IF BIDDER(S) (ARE) A CORPORATION, COMPLETE THE FOLLOWING:

NAMES

LEGAL RESIDENCE

\_\_\_\_\_

\_\_\_\_\_

**President**

\_\_\_\_\_

\_\_\_\_\_

**Secretary**

---

**Treasurer**

---

**President**

---

**Secretary**

---

**Treasurer**

**Identifying Data:**

**Potential Consultant:** \_\_\_\_\_

**Street Address:** \_\_\_\_\_

**City, Town, etc.** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Title:** \_\_\_\_\_

\_\_\_\_\_  
If applicable, Responsible Corporate Officer Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**Joint or combined bids by companies or firms must be certified on behalf of each participant:**

\_\_\_\_\_  
Legal name of person, firm or corporation

\_\_\_\_\_  
Legal name of person, firm or corporation

By \_\_\_\_\_  
(Name)

By \_\_\_\_\_  
... (Name)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
City and State

**NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND:**

**MACBRIDE FAIR EMPLOYMENT PRINCIPLES**

In accordance with section 165 of the State Finance Law, the bidder, by submission of this bid certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership in the bidder, either: (answer yes or no to one or both of the following, as applicable),

(1) has business operations in Northern Ireland;

Yes\_\_\_ or No\_\_\_

If yes:

(2) shall take lawful steps in good faith to conduct any business operations that it has in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of their compliance with such Principles.

Yes\_\_\_ or No\_\_\_

\_\_\_\_\_  
**Signature**



**Offerer Disclosure of Prior Non-Responsibility Determinations**

\*\*\*\*\*

Name of Individual or Entity Seeking to Enter into the Procurement Contract:

Address:

Name and Title of Person Submitting this Form:

Contract Procurement Number:

Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the procurement contract in the previous four years? (Please circle):

No

Yes

2. If yes, was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j? (Please circle):

No

Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity? (Please circle):

No

Yes

4. If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Has any Governmental Entity or other governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle):

No

Yes

6. If yes, please provide details below.

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

Offerer certifies that all information provided to the Long Island Power Authority with respect to State Finance Law § 139-k in complete, true and accurate.

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

Date: \_\_\_\_\_

**CONTINGENT FEE CERTIFICATION**

In accordance with section F.2 of Article II of the Long Island Power Authority "Guidelines Regarding the Use, Awarding, Monitoring and Reporting of Procurement Contracts" (the "Guidelines"), Proposer, by submission of this proposal certifies the following with respect to the payment of contingent fees:

Proposer has not employed or retained and will not employ or retain any individual or entity for the purpose of soliciting or securing any Long Island Power Authority contract or any amendment or modification thereto pursuant to any agreement or understanding for receipt of any form of compensation which in whole or in part is contingent or dependent upon the award of any such contract or any amendment or modification thereto; and

Proposer will not seek or be paid an additional fee that is contingent or dependent upon the completion of a transaction by the Long Island Power Authority.

\*\*\*\*\*

FAILURE TO PROVIDE THIS CERTIFICATION WILL BE GROUNDS FOR DISQUALIFICATION IN THE PROCUREMENT PROCESS.

VIOLATION OF EITHER (1) OR (2) OF THIS CERTIFICATION SHALL RESULT IN:

- (i) disqualification of Proposer from the procurement process; and
- (ii) prohibition of the Proposer from being awarded any contract for a period of three years from the commencement of the procurement process.

\*\*\*\*\*

Certified as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name of person, firm or corporation

By \_\_\_\_\_  
(Name and Title)

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO  
STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

**I. General Provisions**

- A. The Long Island Power Authority ("LIPA") is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the "Contractor" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to LIPA to fully comply and cooperate with LIPA in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

**II. Contract Goals**

- A. For purposes of this procurement, LIPA hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises ("MWBE") participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:  
\_\_\_\_\_  
+  
<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5

NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to LIPA for liquidated or other appropriate damages, as set forth herein.

### **III. Equal Employment Opportunity (EEO)**

A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Contractor shall comply with the following provisions of Article 15-A:

1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to LIPA within seventy two (72) hours after the date of the notice by LIPA to award the Contract to the Contractor.
3. If Contractor or Subcontractor does not have an existing EEO policy statement, LIPA may provide the Contractor or Subcontractor a model statement (see Form 102 – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement below).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

- d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

#### C. Form 101 - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

#### D. Form 103 - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to LIPA of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract
3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, LIPA shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

## **V. Waivers**

- A. For Waiver Requests, Contractor should use Form 104 – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, LIPA shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If LIPA, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, LIPA may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. Quarterly MWBE Contractor Compliance Report**

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 105) to LIPA by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where LIPA determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to LIPA liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
  - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by LIPA, Contractor shall pay such liquidated damages to LIPA within sixty (60) days after they are assessed by LIPA unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of LIPA.

FORM 102

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL  
EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, \_\_\_\_\_, the (awardee/contractor) \_\_\_\_\_ agree to adopt the following policies with  
respect to the project being developed or services rendered at \_\_\_\_\_.

**M/WBE**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

**EEO**

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.



Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_

By \_\_\_\_\_

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

\_\_\_\_\_ is designated as the Minority Business Enterprise Liaison  
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

**M/WBE Contract Goals**

\_\_\_\_\_ 20% Minority and Women's Business Enterprise Participation

\_\_\_\_\_ % Minority Business Enterprise Participation

\_\_\_\_\_ % Women's Business Enterprise Participation

**EEO Contract Goals**

\_\_\_\_\_ % Minority Labor Force Participation

\_\_\_\_\_ % Female Labor Force Participation

\_\_\_\_\_  
(Authorized Representative)

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

Date: \_\_\_\_\_

## APPENDIX J

### **REGIONAL GREENHOUSE GAS INITIATIVE PROCEDURES**

As required by Article 9 of the Agreement, Genco shall comply with the Regional Greenhouse Gas Initiative ("RGGI") for the term of the Agreement (or until the earlier termination of the RGGI) by participation in quarterly RGGI auctions and through secondary market purchases (through its affiliate National Grid Energy Trading Services ("NGETS") or any successor thereto, or other party designated by Genco to provide the services described below). Accordingly, LIPA shall reimburse Genco for its carbon dioxide ("CO<sub>2</sub>") allowance purchase costs and associated carrying costs, as required by Article 9 of the Agreement.

#### **1. STRATEGY:**

The strategy for purchasing required CO<sub>2</sub> allowances for the Generation Units covered under the Agreement is generally as follows:

1. NGETS will purchase CO<sub>2</sub> allowances consistent with actual and projected need in an effort to minimize associated carrying costs. NGETS will propose for each quarterly auction a strategy in furtherance of such objective, so as to enable Genco to obtain CO<sub>2</sub> allowances over the applicable regulatory compliance period (the "Compliance Period") adopted by the New York Department of Environmental Conservation ("DEC"). The Parties, however, also recognize that having the flexibility to gradually build up a compliance bank of CO<sub>2</sub> allowances to adequately cover corresponding emissions before the Compliance Period expires is important and will facilitate meeting compliance requirements.
2. Each quarter's CO<sub>2</sub> allowances purchases will be based in part on prior actual emissions and MAPS modelling projections and may be reasonably adjusted (up or down) during succeeding RGGI auctions or by secondary market purchases based on actual emission variances from these reference points.
3. The task oriented details of cross-organizational responsibilities related to Genco's acquisitions of CO<sub>2</sub> allowances are set forth below. LIPA, Genco and NGETS may, from time to time, review such details and modify same to the extent the parties mutually agree.

#### **2. PROCUREMENT AND BILLING:**

The RGGI auction bidder requirements are to post a security deposit (or other form of guaranty), in advance, to participate in each scheduled RGGI auction. As a matter of past practice, Genco has used the posting of a security deposit in the RGGI bidding process to cover anticipated auction expenditures. LIPA and Genco will use the following procedures for (a) posting the security deposit, and (b) effecting LIPA's reimbursement of Genco's costs:

- (a) At least five (5) Business Days prior to each scheduled security deposit posting, NGETS will notify LIPA of NGETS's auction bidding strategy, including estimates of projected allowance needs, the quantity of allowances for which a bid will be placed, along with (i) the bid pricing structure, and (ii) the amount of the security deposit required to support same ("Auction Plan Notice"). Due to the evolving nature of emission credit markets, the information contained in the Auction Plan Notice may be further refined by NGETS prior to the posting of the security deposit.
- (b) At least two Business Days prior to each such security deposit posting, LIPA will, in writing, acknowledge its agreement with the Auction Plan Notice, or advise NGETS of any LIPA concerns or objections thereto, which NGETS shall take into account in finalizing its bidding strategy, bid and/or the calculation of the security deposit. LIPA's failure to so notify NGETS within such two (2) Business Days period will be deemed LIPA acceptance of such Auction Plan Notice.
- (c) In accordance with the requirements of RGGI and each auction, and as determined by NGETS, NGETS will arrange for the posting of the security deposit, and NGETS will submit its bid for CO<sub>2</sub> allowances.
- (d) If at any time during the Compliance Period NGETS determines that bidding strategy modifications are warranted, NGETS will promptly notify LIPA of same.
- (e) LIPA shall have the option to fund the security deposits in advance of such auctions in lieu of reimbursing Genco for such costs, and in the event that LIPA so elects, LIPA will deposit the appropriate security deposit funds in an account designated by Genco prior to the required security posting deadline. LIPA shall notify NGETS of such intentions at least five (5) Business Days prior to each applicable security deposit posting deadline. NGETS will then submit bids as previously described herein. If after the close of the corresponding bid, the actual CO<sub>2</sub> allowances purchased cost less than the amount of the security deposit posted by LIPA, Genco will cause the return of the remaining balance of the security deposit to LIPA within two (2) Business Days of NGETS's receipt thereof from the auction agent.
- (f) From time to time, NGETS, in its reasonable discretion, consistent with Prudent Utility Practice, may use secondary market sources to acquire required CO<sub>2</sub> allowances in order to maintain allowance balances adequate to cover the current quarter's projected emissions. In such an event, NGETS will notify LIPA of such plan at least five (5) Business Days prior to plan execution. In conjunction with such notification, NGETS shall provide LIPA with supporting documentation containing, at a minimum, the rationale for making such purchases, the expected

quantity, unit price, and total cost of CO<sub>2</sub> allowances to be purchased; and the expected premium or discount to be paid compared to clearing prices in recent RGGI Auctions and prices in the secondary market reported by brokers. Upon receipt of such notification and supporting documentation, LIPA will review the materials and notify NGETS within five (5) Business Days of any concern it has with NGETS' planned purchases of CO<sub>2</sub> allowances from secondary market sources. LIPA's failure to so notify NGETS within five (5) Business Days will be deemed LIPA acceptance of such planned purchase. In the event LIPA expresses a concern with such planned purchase, the Parties shall promptly meet and confer to resolve such concern.

- (g) The costs and expenses associated with the purchase of CO<sub>2</sub> allowances consumed by the Generating Units covered under the Agreement will be paid for by LIPA pursuant to Article 9 of the Agreement; provided, however, that Genco shall invoice LIPA separately from the Monthly Capacity Charge and Monthly Variable Charge for CO<sub>2</sub> allowances purchased and consumed, which billing will include carrying charges on all funds that are advanced by or on behalf of Genco to acquire CO<sub>2</sub> allowances for the Generating Units covered under the Agreement, irrespective of whether such purchased allowances have been consumed. Such costs and expenses shall include all reasonable third party costs (e.g., NGETS) incurred by Genco for preparing the bidding strategy, auction participation and accounting/billing.
- (h) Recognizing that Genco's CO<sub>2</sub> allowance inventory constitutes an addition to Genco's working capital allowance in its rate base, the carrying charge rate on such funds to be advanced and disbursed by Genco will be at Genco's pre-tax rate of return ("PTROR"), established under Appendix A of the Agreement and shall begin to accrue with respect to each such security deposit or secondary purchase, as of the date Genco posts or causes the posting of a security deposit for a RGGI auction, or remits payment to a secondary market purveyor of CO<sub>2</sub> allowances, as the case may be. Invoicing and payment dates shall be the same as specified for the Monthly Variable Charge in Section 5.1.5 of the Agreement. Late payments of any and all balances due under Genco's invoices shall continue to accrue at PTROR until paid in full.
- (i) Accounting for the consumption of the CO<sub>2</sub> allowances will assume that such allowances are consumed on a "first-in, first-out" basis.
- (j) LIPA reserves the right to pay Genco any amounts not yet billed by Genco for CO<sub>2</sub> allowances Genco has purchased and consumed. Such payment by LIPA will include PTROR carrying charges (as determined above) from the date the

security deposit was posted by Genco or its affiliate up to the date of payment by LIPA.

- (k) Subsequent sales by NGETS of CO<sub>2</sub> allowances purchased by Genco are not anticipated. To the extent, however, any excess CO<sub>2</sub> allowances are sold, 100 percent of the net proceeds received from such sales shall be paid to LIPA by NGETS or Genco, as applicable.

### 3. REPORTING:

It is agreed and understood that LIPA has, and shall have, various reporting needs with respect to the acquisition of, and payment for, CO<sub>2</sub> allowances for the Generating Units covered under the Agreement, which Genco and NGETS shall address as follows:

- (a) NGETS will provide LIPA with copies of the submitted RGGI bids within five (5) Business Days of each such RGGI auction in which NGETS participates.
- (b) NGETS will provide LIPA with a summary of the CO<sub>2</sub> allowances purchases that result from each RGGI auction within five (5) Business Days of each such RGGI auction in which NGETS participates.
- (c) NGETS will provide to LIPA a monthly summary of all secondary market purchases of CO<sub>2</sub> allowances.
- (d) Genco will report monthly the cumulative total LIPA allowance liability and LIPA allowance inventory position for the Compliance Period. Genco will report monthly on LIPA allowance liability regardless of whether the allowance inventory covers such liability.
- (e) Genco will report the quantities of each Generating Unit's actual CO<sub>2</sub> emissions to LIPA on a monthly basis subject to a quarterly true-up based on the final Continuous Emissions Monitoring data submission and Environmental Protection Agency approval.
- (f) Genco will provide such additional reports as LIPA may reasonably request; provided LIPA provides Genco with fifteen (15) Business Days advance written notice of such request.

## **APPENDIX K**

### **ALLOCATION METHODOLOGY FOR PROPERTY TAXES AT GENERATING FACILITY SITES**

The following allocation methodology shall be used for purposes of allocating property taxes among assets located at the Generating Facility Sites in instances where property taxes for such assets are assessed on one common tax bill but the Parties are financially responsible for sub-sets of those assets (by reason of ownership of the assets or contractual commitments). For example, the Parties intend that this process will be used to allocate property taxes at the Generating Facility Sites among the Ramp Down units and any other utility assets at each site, including other generation or utility assets for which LIPA is contractually obligated to reimburse Genco for the associated property taxes.

The allocation process shall consist of (i) the appraiser selection process, and (ii) the appraisal. This allocation process shall first be used for purposes of allocating the property taxes for the tax year that covers the period following the expiration of LIPA's obligation to pay property taxes at a Generating Facility, and shall continue to be used by the Parties (and their respective successors and assigns) with respect to the Generating Facility Site until such time as LIPA is no longer financially responsible for any portion of the property taxes on a common tax bill.

#### **1. Appraiser Selection.**

(A) LIPA and Genco shall jointly select, retain and pay for mutually-agreeable appraisers, with the related costs shared (50/50) between the Parties. Selection must be completed within the time frame set forth in the appraisal schedule contained in Attachment 1 (the "Appraisal Schedule"). The real estate appraiser must be (i) nationally or regionally recognized, (ii) from a reputable firm, and (iii) a certified general real estate appraiser; and in the case of the utility appraiser, be from a consulting firm highly experienced and qualified in the field of public utility valuation. A list of mutually agreeable appraisers is set forth on Attachment 2 (this list may be updated from time-to-time to add/remove appraisers as the Parties may mutually agree). The Parties shall commence the appraiser selection process immediately upon LIPA's notification of its intent to Ramp Down a Generating Facility or as soon as reasonably practicable under the circumstances.

(B) Genco and LIPA shall retain both a qualified real estate appraiser and a utility appraiser from the list on Attachment 2.

a. The utility appraiser shall prepare an appraisal as of the applicable tax status dates of the utility assets at the Generating Facility Sites.

b. The real estate appraiser shall appraise, in fee simple absolute, the market value as of the applicable tax status dates of the land and improvements at the Generating Facility Sites.

(C) Genco and LIPA shall obtain and review the following information from the appraiser prior to final selection:

c. details on the process the appraisers will use for completing the appraisal;

d. the appraisers' credentials, which shall demonstrate knowledge of utility assets and/or industrial property transactions, relevant work experience and references;

e. details on any additional resources the appraisers will require in order to complete the appraisals; and

f. a complete listing of information the appraisers will need from Genco and LIPA to complete the appraisal.

(D) Should LIPA or Genco present a good-faith objection to the continued use of a particular appraiser prior to the start of the appraisal process for a particular tax year, the Parties agree to select another mutually-agreeable appraiser from Attachment 2 within a reasonable time.

2. Appraisal Procedure. For each tax year, the Parties shall utilize the following procedure:

(A) LIPA and Genco, in coordination with the appraisers, shall finalize the list of materials needed by the appraisers to complete the appraisals. All information shall be provided to the appraisers and assembled by Genco and LIPA jointly.

(B) There will be a conference among the Parties and the appraisers, at a mutually agreeable date, to respond to any questions that the appraisers may have. The appraisers shall distribute draft reports for factual review before such conference. No conference with the appraisers shall take place without the presence of both Genco and LIPA's representatives.

(C) Within the time period set forth in the Appraisal Schedule, the real estate appraiser shall prepare a self-contained fee simple appraisal report in which he/she will set forth the fair market value of the land and improvements at the Generating Facility Sites.

(D) Within the time period set forth in the Appraisal Schedule, the utility appraiser shall prepare an appraisal report in which he/she will set forth the reproduction cost new, less all forms of depreciation, including physical depreciation and functional and economic obsolescence, of the utility assets.

(E) Upon completion of the appraisals, each appraiser shall share the results with LIPA and Genco, which shall be used as the basis for allocating financial responsibility for property taxes in the applicable tax year. The allocation of the property taxes between the land, improvements and various utility assets at each of the Generating Facility Sites shall be based on the relative fair market value of such land, improvements and utility assets at the Generating Facility Site as determined by the appraisers on the applicable tax status dates, in accordance with the methodology described below in Section 3. An illustrative calculation is attached hereto as Attachment 3.

### 3. Appraisal Methodology.

(A) In completing the appraisals, the appraisers shall consider, as appropriate, the following:

(i) The physical condition of the assets, land and improvements on the relevant taxable status dates;

(ii) Any assets or liabilities associated with the utility assets, land and improvements that would affect the value of said utility assets, land and improvements;

(iii) An analysis of sale of comparable assets and land; and

(iv) Appropriate valuation methodologies.

(B) The appraisals shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP).

(C) "Fair market value" for purposes of these appraisal methodologies shall be defined as follows:

(i) for land and improvements, as the most probable price, as of the specified dates, more fully described below, in cash or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, assuming neither is under duress; and

(ii) for utility assets, as reproduction cost new less all forms of depreciation and obsolescence.

4. Dispute Resolution. Any dispute arising out of or relating to the implementation of the allocation process shall be resolved in accordance with the dispute resolution procedures set forth in Section 20.3 of the Agreement.



**APPRAISAL SCHEDULE**

<b>Task</b>	<b>Due Date</b>
Parties jointly hire the appraisers.	Not less than 6 months prior to the start of the applicable tax year
Both Parties assemble documents required by the appraisers.	Not less than 4 months prior to the start of the applicable tax year
Conference with the appraisers; appraisers to share drafts of appraisal reports with the Parties.	Not less than 3 months prior to the start of the applicable tax year
Appraisers complete appraisal effort and exchange with the Parties.	Prior to the start of the applicable tax year.

**APPRAISERS**

The Parties who are acceptable to Genco and LIPA as appraisers are as follows:

**Utility**

Michael J. Diedrich, PE, ASA, CDP  
AUS Consultants  
8555 West Forest Home Avenue, Suite 201  
Greenfield, WI 53228  
(414) 529-5755

**Land**

Stephen Deutsch, IFA, CSA-G

Matthew J. Guzowski, MAI

Goodman – Marks Associates  
170 Old Country Road, Suite 501  
Mineola, New York 11501  
(516) 248-9777

**Attachment 3****SAMPLE CALCULATION**

Appraisal - Valued as of 1/5/2012; the appraisal would be the basis for relevant market value for tax year 7/1/2012 - 6/30/2013 (School) and Calendar Year 2013 for General.

**First Tax Year**

Assume assessor values assets as follows (\$ in millions):

**Example Only**

Category on Property Tax Bill	Appraisal Amount	Relative Appraised MV	School Tax 7/1/12-6/30/13 (Only used 5/28/13- 6/30/13)	General Tax 1/1/13-12/31/13  (Only used 5/28/13- 12/31/13)
Utility property tax allocated as follows:				
Steam Generating Unit	\$90.0	50.0%	\$7.3	\$3.0
IC Generating Units	<u>90.0</u>	<u>50.0%</u>	<u>7.3</u>	<u>3.0</u>
	<u>\$180.0</u>	<u>100.0%</u>	<u>\$14.5</u>	<u>\$6.0</u>
Commercial for Land allocation:				
Land related to Steam Units	\$3.0	75.0%	\$0.4	\$0.3
Land related to IC Units	<u>1.0</u>	<u>25.0%</u>	<u>0.1</u>	<u>0.1</u>
	<u>\$4.0</u>	<u>100.0%</u>	<u>\$0.5</u>	<u>\$0.4</u>
Other Commercial Properties Allocation				
T&D Property	\$0.1	95.0%	\$0.0	\$0.0
Gas Property	0.0	4.0%	0.0	0.0
Other Genco Property - Steam Unit related	0.0	0.5%	0.0	0.0
Other Genco Property - IC Unit related	<u>0.0</u>	<u>0.5%</u>	<u>0.0</u>	<u>0.0</u>
	<u>\$0.1</u>	<u>100.0%</u>	<u>\$0.1</u>	<u>\$0.1</u>

## APPENDIX L

### INSURANCE

Commencing with the Commencement Date and at all times throughout the Term of this Agreement except as expressly provided below, Genco shall cause to be maintained the types and amounts of insurance required by this Appendix L. Such insurance shall be placed with responsible and reputable insurance companies which have an A.M. Best rating of at least "A-". Genco shall give LIPA prompt notice of any material alteration to any of such insurance coverages, but in no event later than thirty (30) Days after it learns of such material alteration.

#### 1. Insurance Policies and Limits:

##### 1.1 Insurance Policies and Limits:

The following insurance policies with respect to this Agreement and the Generating Facilities are in effect on the Commencement Date:

<b>Policy</b>	<b>Coverage</b>	<b>Limits</b>	<b>Additional Insured</b>
"All Risk" Property Fixed Locations	Property damage coverage for losses. Policy Aggregate Deductible \$7.5 million	Replacement Cost of damaged property up to \$1.0 billion.	LIPA and the Long Island Power Authority
Automobile Liability	Third party bodily injury or property damage arising out of the ownership, maintenance, or use of any auto.	\$35,000,000 per occurrence, in excess of a \$3,000,000 self insured retention.	LIPA and the Long Island Power Authority
Excess Liability	General Liability Program \$3M Self Insured Retention	\$35,000,000 per occurrence, in excess of a \$3,000,000 self insured retention.	LIPA and the Long Island Power Authority
Workers Compensation		\$1 million primary with statutory coverage for excess	

#### 2. General Provisions.

##### 2.1 Evidence of Coverage:

Genco shall, within thirty (30) Days following the Commencement Date of this Agreement, and within five (5) Days after each reasonable request by LIPA, provide certificates of insurance to LIPA's insurance consultant for all insurance policies required hereunder.

##### 2.2 Additional Insureds:

With the exception of Workers' Compensation coverage, LIPA and the Long Island Power Authority shall be included as an additional insured, and any other party reasonably requested by LIPA shall be named as additional insured for occurrences arising out of or in connection with this Agreement with respect Sections 1.1 of this Appendix L, as their interests may appear. With respect to Workers' Compensation and Employer's Liability, LIPA and any other party reasonably requested by LIPA, shall be named as Alternate Employer; provided that, Genco's insurance shall not include coverage for LIPA's employees or any employee of any other party requested by LIPA.

2.3 Waiver of Subrogation:

Under each policy under which LIPA is required by this Appendix L to be named as an additional insured, LIPA and any other party reasonably requested by LIPA shall be granted waivers of subrogation by insurers providing coverage as required by this Appendix L.

2.4 Severability of Insureds:

Each policy under which LIPA is required by this Appendix L to be named as an additional insured shall provide that (i) inclusion of more than one person or organization as insured hereunder shall not in any way affect the rights of any such person or organization as respects any claim, demand, suit or judgment made, brought or recovered, by or in favor of any other insured, or by or in favor of any employee of such other insured, and (ii) each person or organization is protected thereby in the same manner as though a separate policy had been issued to each, but nothing therein shall operate to increase the insurance company's liability as set forth elsewhere in the policy beyond the amount for which the insurance company would have been liable if only one person or interest had been named as insured.

2.5 Primary Insurance:

Except for Property Insurance, for each policy under which LIPA is required by this Appendix L to be named as an additional insured, the insurance coverage required by this Appendix L shall be primary insurance with respect to the interests of LIPA and any other party reasonably requested by LIPA; any other insurance maintained by LIPA or such other parties shall be excess and shall not contribute with the insurance required by this Appendix L.

2.6 Notice of Cancellation:

Genco shall provide LIPA with copies of any notices of cancellation or material alteration of any insurance policy required by this Appendix L, within thirty (30) Days of receipt of such notice by Genco.

2.7 Deductibles:

Any and all deductible amounts under policies provided by Genco pursuant to this Appendix L shall (as between Genco and LIPA) be assumed by, for the account of, and at the sole risk of Genco; subject, however, to (i) the charges set forth in

Article 5 of the Agreement and (ii) the allocations of risk and liability pursuant to Article 19.

3. Genco Disclosure and Cooperation:

Where Genco is providing insurance coverage for the benefit of LIPA, procuring insurance at the request of LIPA, and/or securing coverage at the expense of LIPA, Genco shall furnish an exact copy of said policies, upon LIPA's request.

## **APPENDIX M**

### **FORM OF GUARANTY AGREEMENT**

This Guaranty Agreement (the "Guaranty") is made by KEYSPAN CORPORATION (the "Guarantor"), a corporation organized and existing under the laws of the State of New York, in favor of LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation ("LIPA"), a wholly-owned subsidiary of the LONG ISLAND POWER AUTHORITY (the "Authority"), a corporate municipal instrumentality of the State of New York and a body corporate and politic and a political subdivision of the State of New York. Defined terms used herein and not defined have the meanings assigned to them in the Agreement (defined below).

### **RECITALS**

WHEREAS, National Grid Generation, LLC, a limited liability company organized and existing under the laws of the State of New York ("Genco"), and LIPA are parties to that certain Amended and Restated Power Supply Agreement, dated as of October 10, 2012, (as the same may be modified, amended, supplemented or extended, the "Agreement") pursuant to which Genco has agreed to sell to LIPA, and LIPA has agreed to purchase from Genco, certain Capacity, Energy and Ancillary Services (each as defined in the Agreement) from specified Genco electric generating facilities on Long Island; and

WHEREAS, the Guarantor is the parent company of Genco, and will receive benefits from Genco's execution and performance of the Agreement and has agreed to enter into this Guaranty to provide assurance for Genco's performance of its obligations under the Agreement and to induce LIPA to enter into the Agreement.

NOW, THEREFORE, in consideration of good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally, irrevocably and absolutely guarantees the performance of Genco's obligations arising under the Agreement, as it may be amended or modified by agreement between Genco and LIPA from time to time (together with any and all reasonable costs and expenses, including reasonable attorneys' fees and expenses, incurred by LIPA in enforcing its rights under this Guaranty other than costs and expenses that LIPA incurs in performing any of its obligations under the Agreement, the "Guaranteed Obligations"). In addition, the Guarantor shall reimburse LIPA for all sums paid to LIPA by Genco with respect to such Guaranteed Obligations which LIPA is subsequently required to return to Genco or a representative of Genco's creditors as a result of Genco's bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding.

2. **Guaranty Absolute.** (a) The liability of the Guarantor under this Guaranty shall be absolute, irrevocable and unconditional irrespective of:

(b) any modification, extension or waiver of any of the terms of the Agreement in accordance with the terms thereof;

(c) any change in the time, manner, terms or place of payment of or in any other term of, all or any of the Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from the Agreement or any other agreement or instrument executed in connection therewith;

(d) any sale, exchange, release or non-perfection of any property standing as security for the liabilities hereby guaranteed or any liabilities incurred directly or indirectly hereunder or any set-off against any of said liabilities, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Guaranteed Obligations;

(e) except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by LIPA to exercise, in whole or in part, any right or remedy held by LIPA with respect to the Agreement or any transaction under the Agreement; or

(f) any change in the existence, structure or ownership of the Guarantor or Genco, or any bankruptcy, insolvency, reorganization, liquidation, receivership, or similar proceeding affecting Genco or its assets.

This Guaranty constitutes a guaranty of payment and performance when due and not of collection, and the Guarantor specifically agrees that it shall not be necessary or required that LIPA exercise any right, assert any claim or demand or enforce any remedy whatsoever against Genco, the Guarantor or any other person liable for the performance of the Guaranteed Obligations either before or as a condition to the obligations of the Guarantor hereunder. Notwithstanding any provision to the contrary herein, the Guarantor shall have the benefit of and the right to assert any and all legal or equitable rights or defenses against the claims of LIPA that are available to Genco, as well as those legal or equitable rights or defenses that would have also been available to the Guarantor if the Guarantor had been in the same contractual position as Genco under the Agreement other than (a) defenses arising from the insolvency, reorganization or bankruptcy of Genco, (b) defenses expressly waived in this Guaranty, and (c) defenses previously asserted by the Genco in a prior action against Genco for claims regarding the same disputed matter to the extent such defenses have been finally resolved in LIPA's favor by an arbitration award under the Agreement or a final, non-appealable court order. All sums payable by the Guarantor hereunder shall be paid by wire transfer of immediately available funds to the account designated by LIPA.

3. **Unconditional Obligations.** The obligations of the Guarantor under this Guaranty are independent of any obligations of Genco under the Agreement, and an action may be brought and prosecuted against the Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Genco, or whether Genco is joined in any such action or actions. The liability of the Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and the Guarantor hereby irrevocably waives, any circumstance that constitutes a legal or equitable discharge under applicable law of the Guarantor or a surety other than satisfaction in full of the Guaranteed Obligations.



4. **Waiver.** The Guarantor hereby waives:

(a) notice of acceptance of this Guaranty, notice of the creation or existence of any of the Guaranteed Obligations and notice of any action by LIPA in reliance hereon or in connection herewith;

(b) notice of the entry into the Agreement between Genco and LIPA and notice of any amendments, supplements or modifications thereto; or any waiver of consent under the Agreement, including waivers of the payment and performance of the obligations thereunder;

(c) notice of any increase, reduction or rearrangement of Genco's obligations under the Agreement;

(d) except as expressly set forth herein, presentment, demand for payment, notice of dishonor or nonpayment, protest and notice of protest or any other notice of any other kind with respect to the Guaranteed Obligations; and

(e) any requirement that suit be brought against, or any other action by LIPA be taken against, or any notice of default or other notice be given to, or any demand be made on, Genco or any other Person, or that any other action be taken or not taken as a condition to the Guarantor's liability for the Guaranteed Obligations under this Guaranty or as a condition to the enforcement of this Guaranty against the Guarantor.

Notwithstanding any provision to the contrary herein, Guarantor shall have the right to make inquiry of LIPA or any other Person to ascertain the amount of the Guaranteed Obligations at any time, and Guarantor shall be entitled to receive any and all notices required to be given in connection with this Guaranty or the Guaranteed Obligations, including those notices required as a condition to the enforcement of the Guaranteed Obligations.

5. **Subrogation.** Unless and until the Guaranteed Obligations are paid in full, notwithstanding any payment or payments made by the Guarantor under this Guaranty or any set-off or application of funds of the Guarantor by LIPA, the Guarantor shall not be entitled to be subrogated to any of the rights of LIPA against Genco or any collateral security or guaranty or right of offset held by LIPA for the payment of the Guaranteed Obligations, nor shall the Guarantor seek or be entitled to seek any contribution or reimbursement from LIPA in respect of payments made by the Guarantor under this Guaranty.

6. **Notices.** All demands, notices and other communications provided for hereunder shall, unless otherwise specifically provided herein, (a) be in writing addressed to the party receiving the notice at the address set forth below or at such other address as may be designated by written notice, from time to time, to the other party, and (b) be effective upon delivery, when mailed by U.S. mail, registered or certified, return receipt requested, postage prepaid, or personally delivered or by facsimile transmission. Notices shall be sent to the following addresses:

If to LIPA:

Long Island Lighting Company d/b/a LIPA  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: Vice President of Power Markets  
Facsimile No: (516) 222-9137

with a copy to:

Long Island Lighting Company d/b/a LIPA  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attention: General Counsel  
Facsimile No: (516) 222-9137

If to the  
Guarantor:

KeySpan Corporation  
One Metrotech Center  
Brooklyn, New York 11201  
Attention: General Counsel  
Facsimile: [To come.]

7. **No Waiver; Remedies.** Except as to applicable statutes of limitation, no failure on the part of LIPA to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

8. **Assignment; Successors and Assigns.** Neither the Guarantor nor LIPA shall assign its rights hereunder without the prior written consent of the other party, and any assignment without such prior written consent shall be null and void and of no force or effect, except that LIPA may assign this Guaranty and its rights hereunder or transfer such rights by operation of law, to any other governmental entity or to a subsidiary of LIPA or the Authority. This Guaranty shall be binding upon and inure to the benefit of each party hereto and their respective successors and permitted assigns.

9. **Amendments, Etc.** No amendment of this Guaranty shall be effective unless in writing and signed by the Guarantor and LIPA. No waiver of any provision of this Guaranty or consent to any departure by the Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by LIPA. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

10. **Caption.** The captions in this Guaranty have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and provisions of this Guaranty.

11. **Representation and Warranties.** The Guarantor represents and warrants as follows:

(a) the Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full corporate power to execute, deliver and perform this Guaranty;

(b) the execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary corporate action and do not contravene (i) the Guarantor's organizational documents, (ii) any contractual restriction binding on the Guarantor or its assets or (iii) Applicable Law;

(c) this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles;

(d) no consent of any Person is required for the due execution, delivery and performance by the Guarantor of this Guaranty that has not been obtained;

(e) there is no claim now pending before or, to the best of the Guarantor's knowledge, threatened against it by, any Governmental Body or arbitral tribunal that is reasonably likely to have a material adverse effect on the Guarantor's ability to perform its obligations under this Guaranty;

(f) no bankruptcy, reorganization or insolvency proceedings are pending by or against the Guarantor, as debtor; and

(g) the Guarantor meets the creditworthiness standards required for guarantors in the Agreement.

12. **Term.** This Guaranty shall remain in full force and effect from the Effective Date until all of the later of (a) the date on which the Guaranteed Obligations have been fully paid or performed or (b) the date on which the Agreement is terminated pursuant to the terms thereof.

13. **GOVERNING LAW.** THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD OR REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES OF ANY JURISDICTION.

14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

15. **Severability.** If any provision of this Guaranty shall be prohibited, invalid or unenforceable under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Guaranty, which will be enforceable to the fullest extent permitted by Applicable Law.

16. **Entire Agreement.** This Guaranty constitutes the entire agreement and understanding between the Guarantor and LIPA with respect to the Guaranteed Obligations and supersedes and replaces in its entirety any and all guaranties previously issued by the Guarantor to LIPA with respect to the Guaranteed Obligations, or any part of them.

17. **Counterparts.** This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized representative effective as of this \_\_\_\_ day of \_\_\_\_\_, 2012.

KEYSPAN CORPORATION

By: \_\_\_\_\_  
Name:  
Title:



333 Earle Ovington Boulevard  
Suite 403  
Uniondale, NY 11553  
(516) 222-7700 Fax (516) 222-9137  
www.lipower.org

January 2, 2013

**VIA ELECTRONIC MAIL**  
**and OVERNIGHT MAIL**

Mr. John G. Cochrane  
Executive Vice President  
National Grid Generation LLC  
c/o National Grid  
40 Sylvan Road  
Waltham, Massachusetts 02451

Re: Letter Agreement to Amend Section 24.2 of the Amended and Restated Power Supply Agreement, dated October 10, 2012, between the Long Island Lighting Company d/b/a LIPA and National Grid Generation LLC (Contract No. C000763)

Dear Mr. Cochrane:

Reference is made to the Amended and Restated Power Supply Agreement, dated October 10, 2012, ("A&R PSA") between the Long Island Lighting Company d/b/a LIPA ("LIPA") and National Grid Generation LLC ("Genco"). All capitalized terms referenced herein shall have the meaning ascribed to them in the A&R PSA.

The Parties entered into the A&R PSA pursuant to which LIPA has agreed to continue to purchase from Genco, and Genco has agreed to sell to LIPA, the Electricity produced by certain of Genco's Long Island Generating Facilities in order to meet the needs of LIPA's customers, and to also provide for the possible future repowering of certain of Genco's Generating Facilities. The A&R PSA is currently being reviewed by the New York State Attorney General ("NYS AG") and the Office of the New York State Comptroller ("Comptroller").

During the course of the NYS AG's review of the A&R PSA, the NYS AG requested that an amendment be made to the A&R PSA in order for it to continue its review and approval activities of the A&R PSA. Specifically, the NYS AG requested that Section 24.2 (Assignment and Transfer) be amended to insert the phrase, "any other successor", after the word "Authority".

The parties have discussed their desire to amend Section 24.2 of the A&R PSA to include assignment to any other successor to LIPA or the Authority as requested by the NYS AG. Accordingly, the Parties agree to enter into this letter agreement (hereafter referred to as "Amendment No. 1") to amend Section 24.2 to be replaced in its entirety to read as follows:

**"24.2 Assignment and Transfer.** This Agreement may be assigned by either Party hereto only with the prior written consent of the other Party, except that: (1) without the consent of Genco (a) LIPA may make such assignments, create such security interests in its rights hereunder and pledge such monies receivable hereunder as may be required in

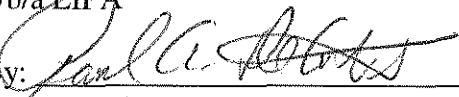
connection with its issuance of revenue bonds to finance its business and operations; and (b) LIPA may assign its rights, obligations and interests hereunder, or transfer such rights and obligations by operation of law, to any other Governmental Authority or to a subsidiary of LIPA or the Authority or any other successor provided that the successor entity gives reasonable assurances to Genco that it will be able to fulfill LIPA's obligations hereunder; and (2) without the consent of LIPA, (a) Genco may assign its rights, obligations and interests in this Agreement to the Guarantor or any Affiliate thereof, and (b) Genco may sell, assign or transfer a pecuniary interest in any payment, revenues, proceeds, incentive, profits or income derived from this Agreement to any party."

This letter agreement shall be legally binding and effective upon approval of this letter agreement by (a) the Comptroller; and (b) the New York State Attorney General (as to form).

This letter agreement may be executed in one or more counterparts, each one of which may be considered an original, but all of which together shall constitute one and the same agreement. Except as expressly set forth in this letter agreement, the A&R PSA remains unmodified.

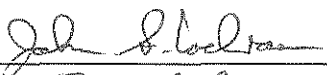
Please confirm Genco's agreement and acceptance to the foregoing by signing in the space provided below and returning a copy to Paul A. DeCotis, Vice President of Power Markets.

Sincerely,  
LONG ISLAND LIGHTING COMPANY  
d/b/a LIPA

By:   
Name: Paul A. DeCotis  
Title: Vice President of Power Markets

Agreed to and accepted:

NATIONAL GRID GENERATION LLC

By:   
Name: JOHN G. COCHRANE  
Title: PRESIDENT  
Date: January 3, 2013

APPROVED BY:  
Office of the State Comptroller

Name	APPROVED DEPT. OF AUDIT & CONTROL
Title	MAR 14 2013
Date	<u>John G. Cochrane</u> OFF. OF STATE COMPTROLLER

APPROVED AS TO FORM:  
Office of the New York State Attorney General

Name	APPROVED AS TO FORM NYS ATTORNEY GENERAL
Title	JAN 07 2013
Date	<u>Lorraine J. Remo</u> LORRAINE J. REMO PRINCIPAL ATTORNEY

cc: National Grid (Via Electronic Mail and/or Fax)  
Colin Owyang, Senior Vice President and General Counsel (Fax 781-907-5701)  
Philip A. DeCicco, Assistant General Counsel (Email at Philip.Decicco2@us.ngrid.com)

LIPA (Via Email)

Rick Shansky, Asst. Vice President of Power Resources & Contract Management  
Lynda Nicolino, General Counsel

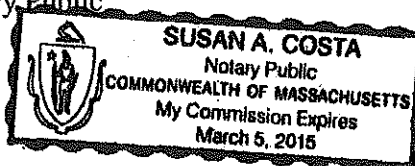
STATE OF Massachusetts )  
~~NEW YORK~~

COUNTY OF Middlesex )

On January 3, 2013 before me personally came John Cochrane, to me known to be the individuals described in the foregoing instrument in his/her capacity as President of National Grid Generation LLC, the New York limited liability company described in and which executed the foregoing instrument, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

Susan A. Costa

Notary Public



STATE OF NEW YORK )

COUNTY OF NASSAU )

On January 3, 2013 before me personally came Paul A. DeCoti, to me known to be the individuals described in the foregoing instrument in his/her capacity as Vice President of Power Markets, of the Long Island Lighting Company d/b/a LIPA, a New York corporation, who being duly sworn did acknowledge that these persons executed same on behalf of, and that these persons were authorized to execute same on behalf of the aforementioned entity.

Tamika S. Mendoza

Notary Public

Tamika S Mendoza  
Notary Public State of New York  
No. 02ME6265084  
Qualified In Suffolk County  
Commission Expires July 09 2016



~~National Grid Generation LLC~~  
~~Electric Rate Schedule No. 1~~

~~Capacity, Energy and Ancillary Services~~  
~~Provided By~~  
~~National Grid Generation LLC~~  
~~To~~  
~~Long Island Power Authority~~

**~~SALES OF ELECTRIC CAPACITY, ENERGY, AND  
ANCILLARY SERVICES TO  
THE LONG ISLAND POWER AUTHORITY~~**

~~\_\_\_\_\_ National Grid Generation LLC provides service to the Long Island Power Authority (“LIPA”) involving the sales of electric capacity, energy, and ancillary services pursuant to the Power Supply Agreement between National Grid Generation LLC and LIPA, as amended.~~

~~By an Assignment and Assumption Agreement, dated as of May 28, 1998, the Long Island Lighting Company assigned all of its rights, obligations, and interests under this Power Supply Agreement (“PSA”) to MarketSpan Generation LLC (hereinafter referred to as “Genco”). By Certificate of Amendment of the Certificate of Incorporation of MarketSpan Corporation, dated as of May 20, 1999, MarketSpan Corporation amended its name to KeySpan Corporation. By Notice of Assumption filed with the Commission on June 9, 2008, National Grid Generation LLC assumed the tariffs and rate schedules of KeySpan Generation LLC. Accordingly, this PSA describes the rights, obligations, and interests between National Grid Generation LLC and the Long Island Power Authority.~~

**~~POWER SUPPLY AGREEMENT~~**

~~between~~

**~~LONG ISLAND LIGHTING COMPANY~~**

~~and~~

**~~LONG ISLAND POWER AUTHORITY~~**

~~Dated as of June 26, 1997~~

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## **POWER SUPPLY AGREEMENT**

~~— This POWER SUPPLY AGREEMENT (“Agreement”) is entered into as of June 26, 1997 (“Contract Date”) by and between Long Island Lighting Company, a New York corporation (“GENCO”), and LONG ISLAND POWER AUTHORITY, a corporate municipal instrumentality and political subdivision of the State of New York (“LIPA”). Each of the foregoing are sometimes referred to herein as a “Party” and collectively as the “Parties.”~~

### **RECITALS**

~~— WHEREAS, GENCO, is currently the owner of the Generating Facilities (as defined herein), LIPA desires to purchase capacity and energy from the Generating Facilities in order to provide Electricity (as defined herein) to its customers on Long Island.~~

~~— WHEREAS, if LIPA exercises its right to purchase the Generating Facilities under the Generation Purchase Right Agreement dated the date hereof, the purchase of capacity and energy hereunder shall terminate.~~

~~— WHEREAS, GENCO and LIPA have set forth in this Agreement the terms and conditions for the sale and delivery of electric capacity and energy by GENCO to LIPA.~~

~~— NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:~~

### **ARTICLE 1— DEFINITIONS**

~~— Unless otherwise required by the context in which any defined term appears, the following capitalized terms have the meanings specified in this Article 1.~~

- ~~1.1. — “Ancillary Service” means the ancillary services required by NYPP/ISO from time to time to enable the NYPP/ISO to operate the transmission system in New York State in a secure and reliable manner.~~
- ~~1.2. — “Applicable Law” means any law, rule, regulation, condition or requirement, guideline, ruling, ordinance or order of or any Legal Entitlement issued by, any Governmental Authority and applicable from time to time to the performance of the obligations of the parties hereunder.~~
- ~~1.3. — “Business Day” means any day other than a Saturday, Sunday or Legal Holiday (as defined herein).~~
- ~~1.4. — “Base Interest Rate” means the lesser of (1) the maximum rate of interest permitted by Applicable Law or (2) the prime interest rate plus one percentage point as reported in The Wall Street Journal for each day.~~
- ~~1.5. — “Capacity Charge” has the meaning ascribed to that term in Section 8.1.1.~~
- ~~1.6. — “Change of Control” means (i) the acquisition of beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the “1934 Act”)) of 35% or more of the outstanding shares of securities the holders of which are generally entitled to vote for the election of directors of GENCO or the Guarantor, as the case may be (including securities convertible into, or exchangeable for, such securities or rights to acquire such securities or securities convertible into, or exchangeable for such securities, “Voting Stock”), on a fully diluted basis, by any Person or group of Persons (within the meaning of Section 13 or 14 of the 1934 Act); (ii) any sale, transfer or other disposition of beneficial ownership of 35% or more of the outstanding shares of the~~



~~Voting Stock, on a fully diluted basis, of GENCO or the Guarantor, as the case may be; (iii) any merger, consolidation, combination or similar transaction of GENCO or the Guarantor, as the case may be, with or into any other Person, whether or not GENCO or the Guarantor, as the case may be, is the surviving entity in any such transaction; (iv) any sale, lease, assignment, transfer or other disposition of the beneficial ownership in 35% or more of the property, business or assets of GENCO or the Guarantor, as the case may be; (v) a Person other than the current shareholders of GENCO or the Guarantor, as the case may be, obtains, directly or indirectly, the power to direct or cause the direction of the management or policies of GENCO or the Guarantor, as the case may be, whether through the ownership of capital stock, by contract or otherwise; (vi) during any period of 12 consecutive calendar months, when individuals who were directors of GENCO or the Guarantor, as the case may be, on the first day of such period cease to constitute a majority of the board of directors of GENCO or the Guarantor, as the case may be; or (vii) any liquidation, dissolution or winding up of GENCO or the Guarantor, as the case may be.~~

~~1.7. “Closing Date” has the meaning ascribed to that term in the Merger Agreement (as herein defined).~~

~~1.8. “Contract Date” means the date of this Agreement as set forth on page 1 hereof.~~

~~1.9. “Contract Year” except as LIPA shall otherwise propose subject to the approval of GENCO which approval shall not be unreasonably withheld, means the calendar year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Closing Date and shall end on December 31 of that year, and the last Contract Year shall commence on January 1 prior to the date this Agreement expires or is terminated, whichever is appropriate, and shall end on the last day of the Term of this Agreement or the effective date of any termination, whichever is appropriate. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.~~

~~1.10. “Contract Year Budget Plan” shall mean a budget plan for the Contract Year. Thereafter, Contract Year Budget Plan means a budget plan for each Contract Year.~~

~~1.11. “Deliver,” “Delivered,” “Delivering” and “Delivery” shall mean the provision of Electricity at the Delivery Points (as defined herein) of a type known as three phase alternating current.~~

~~1.12. “Delivery Point” shall mean that point at which Electrical Metering Equipment (as defined herein) is located, as described in Appendix D for each of the Generating Facilities.~~

~~1.13. “Dependable Maximum Net Capability” shall mean the maximum amount of Electricity the Generating Facility can Deliver, as periodically determined through “NYPP Method and Procedure 2 – Uniform Method for Rating Generating Capability,” as modified from time to time, for the applicable capability period.~~

~~1.14. “Dispatch” shall mean LIPA’s adjustment and control of the Generating Facilities’ net electrical energy output for the purpose of regulating the amount of Electricity Delivered.~~

~~1.15. “Electricity” shall mean the electrical energy (real and reactive) and capacity produced by the Generating Facilities and Delivered to the Delivery Point.~~

~~1.16. “Electricity Customers” means the retail and wholesale electricity customers of LIPA located in the Service Area.~~

~~1.17. “Energy Manager” means Long Island Lighting Company, and its permitted successors and assigns.~~

~~1.18. “Energy Management Agreement” means the Energy Management Agreement entered into between Energy Manager and LIPA on or about the date of the signing of this agreement.~~

- 1.19. ~~“Event of Default” has the meaning ascribed to that term in Sections 12.2 and 12.3.~~
- 1.20. ~~“Existing Power Supply Agreements” means the power supply agreements which exist between GENCO and other parties for the purchase of capacity and/ or energy which are in effect as of the Contract Date and which were, either in existence as of March 19, 1997 or which were entered into in accordance with the provisions of Section 6.1 of the Acquisition Agreement on or prior to the Closing Date.~~
- 1.21. ~~“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, accountants, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses of any Legal Proceeding.~~
- 1.22. ~~“FERC” means the Federal Energy Regulatory Commission.~~
- 1.23. ~~“Financing Parties” means any and all Persons that are lenders, lessors, holders of notes, bonds, or mortgages or investors providing or potentially providing bridge, construction, interim or long-term debt or equity financing, or any refinancing of the same or any capital lease of the Generating Facilities, and any agent or trustee for any such Persons, and their respective successors and assigns.~~
- 1.24. ~~“Five Year Capital Improvement Budget” has the meaning as ascribed to that term in Section 9.1.2.~~
- 1.25. ~~“Fuel” means the fuel for operating the Generating Facilities.~~
- 1.26. ~~“Generating Facilities” means the electric generating facilities owned by GENCO as of March 19, 1997, including, but not limited to: (a) all systems, structures, equipment and appurtenances associated with each Generating Facility’s operation and forming a part thereof; (b) permanent administrative offices and building structures housing Generating Facility equipment; site improvements such as roads, drainage, fencing and landscaping; and (c) structures, pipelines and equipment for: (i) the delivery of Fuel; (ii) the transport of water, waste water and other waste disposal; and (iii) other materials, supplies and commodities required for the Services. A list of GENCO’s generating units is contained in Appendix C. This definition is to be further developed in accordance with Schedule B of the Merger Agreement (as herein defined).~~
- 1.27. ~~“Generating Facility Sites” means each parcel of land upon which each existing Generating Facility is situated, as well as the land contiguous thereto, owned by GENCO as of March 19, 1997.~~
- 1.28. ~~“Governmental Authority” means any national, state or local government, any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the Generating Facilities or the electrical energy produced by those facilities or this Agreement other than LIPA.~~
- 1.29. ~~“Governmental Rule” means any permit or any law, statute, act, regulation, code, ordinance, rule, judgment, order, decree, directive, requirement, guideline or any similar decision or determination, or any Governmental Authority’s official interpretation or administration of any of the foregoing, excluding any acts of LIPA, that governs or affects the Generating Facilities.~~
- 1.30. ~~“Guarantor” means the Parent (as defined in the Merger Agreement (as defined herein)).~~
- 1.31. ~~“Hazardous Waste” means any waste which by reason of its composition or characteristics is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time, including, but not~~

~~limited to, “Hazardous Substances” as defined in CERCLA and the regulations promulgated thereunder.~~

- ~~1.32. “Legal Entitlement” means any permit, license, approval, authorization, consent and entitlement of whatever kind and however described which is required under Applicable Law to be obtained or maintained by any person with respect to the performance of any obligation under this Agreement.~~
- ~~1.33. “Legal Holiday” is defined as New Year's Day, Martin Luther King Jr.'s Birthday, Lincoln's Birthday, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, Christmas Eve, Christmas Day and New Year's Eve, or other such days as the Parties may mutually agree, from time to time.~~
- ~~1.34. “Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.~~
- ~~1.35. “LIPA Fault” means any breach, failure of compliance, or nonperformance by LIPA with its obligations hereunder or any negligence or willful misconduct by LIPA under this Agreement (whether or not attributable to any officer, trustee, member, agent, employee, representative, contractor, subcontractor of any tier, or independent contractor of LIPA) that materially and adversely affects GENCO's performance or GENCO'S rights or obligations under this Agreement.~~
- ~~1.36. “Loss and Expense” means any and all losses, liabilities, obligations, damages, delays, disincentives, judgments, deposits, costs (including replacement power costs and incremental fuel costs) expenses, claims, demands, charges, taxes, or expenses, including all Fees and Costs.~~
- ~~1.37. “Merger Agreement” means the Agreement and Plan of Exchange and Merger by and among BL Holding Corp., Long Island Lighting Company, LIPA and LIPA Acquisition Corp. dated as of the date hereof.~~
- ~~1.38. “Monthly Ancillary Service Charge” has the meaning ascribed to that term in Section 8.1.3.~~
- ~~1.39. “Monthly Capacity Charge” has the meaning ascribed to that term in Section 8.1.1.~~
- ~~1.40. “Monthly Capacity Payment Adjustment Charge” has the meaning ascribed to that term in Section 8.1.4.~~
- ~~1.41. “Monthly Variable Payment Adjustment Charge” has the meaning ascribed to that term in Section 8.1.5.~~
- ~~1.42. “Monthly Variable Charge” has the meaning ascribed to that term in Section 8.1.2~~
- ~~1.43. “MW” shall mean megawatt.~~
- ~~1.44. “MWN” shall mean net megawatt.~~
- ~~1.45. “MWh” shall mean megawatt hour.~~
- ~~1.46. “MWhG” shall mean gross megawatt hour.~~
- ~~1.47. “Mvar” shall mean reactive megavolt amperes.~~
- ~~1.48. “New York Power Pool” or “NYPP” means the member system currently comprised of Consolidated Edison Company of New York, Inc., Central Hudson Gas and Electric Corporation, Long Island Lighting Company, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation,~~

~~New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, and the New York Power Authority, as such organization or membership may change from time to time.~~

~~1.49. “NYPP/ISO” means the Independent System Operator (“ISO”) into which the NYPP is proposed to be restructured, to the extent approved by FERC. In the event this restructuring occurs, the principal reliability, security and dispatch function of the NYPP will be performed by the ISO.~~

~~1.50. “Off System Sale” means the sale of capacity and/ or energy to wholesale or retail customers located outside of the Service Area.~~

~~1.51. “Parent” shall have the meaning ascribed to such term in the Merger Agreement.~~

~~1.52. “Person” means, unless otherwise specified, any individual, corporation, firms, companies, trusts, business trusts, legal entities, general partnership, limited partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, government or any agency or political subdivision thereof or other entity, including a Governmental Authority.~~

~~1.53. “Prudent Utility Practice” at a particular time means any of the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto), which, in the exercise of reasonable judgment in light of the facts and the characteristics of the T&D System and System Power Supply known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition and good customer relations.~~

~~Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a spectrum or possible practices, methods or acts.~~

~~1.54. “Ramp Down” has the meaning ascribed in Article 11.~~

~~1.55. “Rating Services” means Moody's Investors, Inc., Standard and Poor's Rating Services, Fitch Investors Services, and Duff & Phelps or any of their successors.~~

~~1.56. “Receipt Points” shall mean those points at which gas is received at the Generation Facilities.~~

~~1.57. “Service Area” means the counties of Suffolk and Nassau and that portion of the county of Queens constituting GENCO's electric franchise area as of the effective date of the Long Island Power Authority Act. “Service Area” does not include the Villages of Freeport, Rockville Center, and Greenport.~~

~~1.58. “Summer Operating Period” shall mean the six month period commencing May 1 through and ending October 31.~~

~~1.59. “System Emergency” shall mean any abnormal system condition that requires automatic or immediate manual action to prevent or limit loss of transmission facilities or generation resources that could adversely affect the reliability of an electric system.~~

~~1.60. “System Power Supply” means the electrical capacity and energy from all power supply sources owned by or under contract to LIPA, including, but not limited to, the Existing Power Supply Agreements, this Agreement, LIPA's rights and interests with respect to Nine Mile Point 2, LIPA's interest in any future generating facilities, spot market capacity and energy purchases made by the Energy Manager on behalf of LIPA, and any load control programs or measure adopted by LIPA.~~

~~1.61. “System Pre Emergency” shall mean a condition which reasonably could be expected, if permitted to continue, to contribute to a System Emergency or to a degraded operating condition and includes the Alert, Warning, Major Emergency, and Restoration conditions described in NYPP Operating Procedure 1 “Operation of the Bulk Power System,” as it may be revised or replaced.~~

~~1.62. “T&D System” means the electric transmission and distribution system located in the Service Area which provides the means for transmitting and distributing Generating Facility Electricity and off-system capacity and/ or for energy purchases and Off System Sales.~~

~~1.63. “Term” has the meaning ascribed to that term in Article 12.1.~~

~~1.64. “Unit Heat Rate” means the Btu of fuel per kilowatt hour of gross generation.~~

~~1.65. “Winter Operating Period” shall mean the six month period commencing November 1 and ending April 30.~~

~~1.66. “Year Seven” is the twelve (12) month period commencing on the sixth anniversary of the Closing Date.~~

## **PART I – POWER SUPPLY**

### **ARTICLE 2 – POWER SUPPLY**

~~**2.1. Delivery of Power.** During the Term of this Agreement, except as otherwise provided herein, GENCO agrees to sell and Deliver to LIPA and LIPA agrees to purchase and accept Delivery from GENCO, as follows:~~

~~**2.1.1. Capacity.** GENCO will sell and Deliver to LIPA all the capacity (MW) from the Generating Facilities in accordance with this Agreement.~~

~~**2.1.2. Energy.** GENCO will sell and Deliver to LIPA all the energy (MWh) it produces from the Generating Facilities, in accordance with this Agreement, that LIPA requests to meet the Electricity requirements of its Electricity Customers and for making Off System Sales.~~

~~**2.1.3. Ancillary Services.** GENCO will provide the various Ancillary Services as required by LIPA. LIPA will pay GENCO in accordance with this Agreement, for any cost associated with any Ancillary Services not otherwise compensated by LIPA.~~

~~**2.2. Delivery Points.** Delivery of capacity and energy will be at the Delivery Points, identified in Appendix D, between LIPA’s T& D System and GENCO’s Generating Facilities.~~

### ~~**2.3. Dispatch of Generating Facilities.**~~

~~(a) LIPA shall have the responsibility for the Dispatch of the Generating Facilities for both real (MW) and reactive (Mvar) power requirements for providing Electricity to LIPA. LIPA shall also have the responsibility for the Dispatch of Ancillary Services at the Generating Facilities for its Electricity Customers. It is anticipated that Dispatch of the Generating Facilities will be accomplished by LIPA through the use of existing automatic generator control equipment at the Generating Facilities. If the automatic generator control equipment is not currently installed at a Generating Facility or becomes inoperable, GENCO shall manually implement LIPA’s Dispatch requirements. Internal combustion units are not equipped with automatic generation control equipment and, therefore, LIPA’s Dispatch requirements shall be implemented manually by GENCO.~~

~~(b) GENCO may, in its sole discretion consistent with Prudent Utility Practice, override the automatic generation, reactive power and load frequency control equipment to preserve the safety and integrity of its Generating Facilities and to react to System Emergencies and System Pre Emergencies.~~

~~(c) When Dispatching the Generating Facilities, LIPA will comply with the limitations of Dispatch as set forth in Appendix E, including but not limited to, minimum loadings, ramp rates, scheduled shut down time, internal combustion loadings and start up times on the Generating Facilities. GENCO will inform LIPA when Prudent Utility Practice requires changes to those limitations, either on a short term or long term basis. Such changes may be required due to conditions such as equipment problems (e.g. crack in turbine, build up in precipitators), opacity and voltage regulation. GENCO will~~

~~provide LIPA with revised limitations of Dispatch reflecting such changes as required, but not less than once per year.~~

~~(d) LIPA will provide GENCO with a preliminary schedule of the expected operation of the Generating Facilities (steam units only) on a week ahead and a day ahead basis. For next day and next seven (7) days of operation, the preliminary schedule must be provided to GENCO by 11 AM on the previous day. Schedules for Friday and Saturday must be provided on Thursday by 11 AM. Schedules for Sunday and Monday must be provided on Friday by 11 AM. In the event of a Legal Holiday the schedules must be provided on the last Business Day prior to the Legal Holiday. The above scheduling requirements may be modified in accordance with the NYPP/ ISO requirements. LIPA will not be bound by such preliminary schedule and will be permitted to Dispatch the Generating Facilities on a real time basis consistent with the limitations set forth in Section 2.3 (c).~~

~~(e) GENCO will normally operate the Generating Facilities at a power factor between 0.90 and 1.0 (lead or lag Mvar) at the Delivery Points, subject to the limitations defined in Section 2.3 (b). Notwithstanding the foregoing, during a System Emergency or System Pre Emergency, GENCO may operate the Generating Facilities below a 0.90 power factor but not below a 0.85 power factor (lead or lag Mvar) at the Delivery Point(s), subject to the limitations defined in Section 2.3 (b).~~

~~**2.4. Maintenance Scheduling.** The Generating Facilities' five year maintenance outage schedule will be provided by GENCO ninety (90) days prior to the commencement of each Contract Year. GENCO will not schedule major maintenance outages in the months of June, July and August, except in the case of System Emergency or by mutual agreement, or in response to unusual circumstances in accordance with Prudent Utility Practice. The Parties recognize that certain non-scheduled routine maintenance will be conducted throughout the year, as required, for the purpose of inspection, cleaning and/or repair of power plant equipment. GENCO will attempt to schedule and implement such outages in the off peak periods. GENCO will inform LIPA when such maintenance is required.~~

~~**2.5. Dependable Maximum Net Capability (DMNC) Testing.** GENCO will perform capacity tests on its Generating Facilities to determine the DMNC rating, consistent with the "NYPP Methods and Procedure 2—Uniform Method for Rating Generating Capability," as it may be revised or replaced. If the NYPP Methods and Procedure—2 is revised or replaced, the target level in the DMNC incentive will be modified as required to reflect these changes. GENCO will provide LIPA with sufficient advance notice of the capacity test dates and provide LIPA the opportunity to witness such tests. GENCO will also provide to LIPA the results of the DMNC tests for each individual generating unit.~~

~~**2.6. DMNC Target.** GENCO will use reasonable efforts, in accordance with Prudent Utility Practice to maintain a DMNC level of 3975 MW (to be revised to be equal to the average of annual DMNC values for the last five year period prior to the Closing Date as described in Appendix F) during the Summer Operating Period. It is the intent of the Parties that the expense and capital budgets will be sufficient to provide GENCO a reasonable opportunity to maintain the DMNC target level. If LIPA should not approve an adequate budget it is recognized that the DMNC target may not be achieved. In such event, the incentive/ disincentive provisions of the DMNC performance incentive shall equitably be adjusted consistent with Section 9.2. In addition, this value will be reduced to reflect any Generating Facility that has been Ramped Down, mothballed, retired, significantly derated, removed from service or incurs a long term outage, except that for a significant derating, removal from service or long term outage the reduction in the DMNC target will apply only to the extent that these events were not attributable to GENCO's failure to follow Prudent Utility Practice.~~

~~**2.7. T&D System Access.** LIPA will provide open access service to GENCO on its T&D System for Off System Sales to the extent that the required T&D capacity is available, priced at applicable FERC tariffs or other non-discriminatory terms and prices.~~

**PART II—POWER SUPPLY PLANNING AND OPERATIONS**  
**ARTICLE 3—FUTURE RESOURCE PLANNING**

**~~3.1. Power Supply Planning.~~** This article provides for the provision of information by GENCO to LIPA as requested by LIPA to conduct an Integrated Electric Resource Planning study, and does not obligate LIPA to perform such a study.

**~~3.1.1. Integrated Electric Resource Planning (IERP).~~** The Parties to this Agreement recognize that LIPA intends to perform a comprehensive analysis for meeting the future electric energy requirements of LIPA's Electricity Customers on a periodic basis with due consideration given for environmental issues. This analysis would evaluate all available resource options to meet the electric energy requirements of LIPA's Electricity Customers. LIPA, in consultation with GENCO, may establish a schedule for conducting any IERP study. The IERP analysis is intended to be performed to determine the optimum mix of the Generating Facilities and purchased power in an effort to provide the least cost mix of electricity resources including demand side management (DSM) options for LIPA's Electricity Customers while observing established reliability criteria. GENCO will contribute to any IERP evaluation by providing information to LIPA regarding the operation of the Generating Facilities as requested. At the request of LIPA, GENCO shall:

- ~~(a) Provide projected short and long term maintenance schedules and cost information;~~
- ~~(b) Provide information on planned capacity improvements and capital additions on the Generating Facilities (including environmental compliance modifications);~~
- ~~(c) Provide information and analysis regarding Fuel usage (type);~~
- ~~(d) Provide any other information that may reasonably be required for the conduct of the IERP study.~~

~~LIPA will pay all reasonable costs for providing this information which are not otherwise compensated by payments to GENCO under this Agreement.~~

## **PART III – OTHER ITEMS**

### **ARTICLE 4 – GENERATING FACILITY SITES**

**~~4.1. Interference Compensation.~~** If LIPA's construction or operation of new generating units at Generating Facility Sites materially interferes with either the physical operation of the Generating Facilities or with GENCO's environmental compliance, LIPA shall ensure that GENCO will be compensated for the adverse impact on GENCO of such interference.

**~~4.2. Generating Facilities.~~** GENCO shall not sell or otherwise assign any interest in any of its generating units (as set forth on Appendix C) except for (i) liens securing bona fide debt or other encumbrances incurred in the ordinary course of business, (ii) capital leases or (iii) sales or assignments made with LIPA's prior written consent, which consent shall be deemed to have been given in respect of any and all easements granted pursuant to either Section 5.3(d) of the Generation Purchase Right Agreement dated as of the date hereof by and between GENCO and LIPA or Paragraph 5 of the Grant of Future Rights attached as Schedule F to the Merger Agreement.

**~~4.3. Transmission Requirements.~~** LIPA will be responsible for all transmission reinforcements required in conformance with Prudent Utility Practice for any new generation, including any new interconnections and other T&D System requirements regardless of their location, sufficient to maintain the Delivery of Electricity from the Generating Facilities onto the T&D System. The additional costs charged to GENCO for such transmission reinforcements shall not be greater than if such costs were allocated to all of LIPA's Electricity Customers and transmission service customers on an average system basis.

## **ARTICLE 5 – REGULATION**



~~**5.1. Regulation.** GENCO will seek all necessary regulatory approvals appropriate for the provision of the service to LIPA as described herein. LIPA agrees to provide all reasonable support needed to obtain any required regulatory approvals of this Agreement. In addition, each of LIPA and GENCO agree to provide all necessary information in its possession that is reasonably requested by the other Party for future regulatory filings.~~

## ~~**ARTICLE 6 – STORM RESTORATION**~~

~~**6.1. Storm Declaration.** A storm restoration condition shall be deemed to exist when LIPA requests GENCO personnel to assist in restoring storm caused damage to the T&D System. LIPA shall promptly notify GENCO of a storm restoration condition.~~

~~**6.2. Responsibility During Storm Condition.** Personnel designated by GENCO (in its sole discretion) will be made available to perform storm restoration duties for LIPA upon LIPA's request, as contemplated above, provided that GENCO will follow the same storm restoration practice currently followed by GENCO to make GENCO employees available. LIPA will pay for the incremental costs incurred by GENCO in providing storm restoration services in accordance with this Agreement; personnel costs will be paid in accordance with GENCO's personnel salary scale (including any overtime premiums) consistent with the personnel salary cost basis used to establish fixed operation and maintenance costs in the Capacity Charge in accordance with this Agreement. LIPA will also coordinate and pay any incremental costs related to storm restoration training (e. g. car lease, equipment, meals, etc.). This cost will be reimbursed by LIPA either through an adjustment in the Monthly Variable Charge as contemplated herein or through another mutually agreed-upon method.~~

## ~~**ARTICLE 7 – ENVIRONMENTAL CONSIDERATIONS**~~

~~**7.1. Environmental Compliance.** GENCO shall comply in all material respects with all Applicable Laws including all applicable laws regulating or affecting any spill, discharge, or release of any Hazardous Waste into or upon any of its land, air, surface water, ground water, or improvements located thereon and shall take all action required (including any investigation, study, sampling and testing, cleanup, removal and remediation) by any Governmental Authority having jurisdiction to remedy any notice of violation or non-compliance issued by such entity, with regard to air emissions, water discharges, noise emissions, hazardous discharges, or any other environmental, health, or safety problems affecting the Generating Facilities. All costs including those related to any legal or regulatory proceedings, related to such compliance will be reimbursed by LIPA through an adjustment in the Monthly Capacity Charge and Monthly Variable Charge as contemplated herein. GENCO's liability to LIPA for nonperformance of this Section 7.1 shall be limited to liabilities under Article 19, and its recoverability from LIPA for environmental compliance to the extent allowed under Article 8 and Appendix A shall be limited to the extent addressed in Article 19.~~

## ~~**ARTICLE 8 – PURCHASE PRICE AND PAYMENT**~~

~~**8.1. Price Components.** Except as otherwise specifically provided in this Agreement, the prices LIPA will pay to GENCO for Electricity delivered pursuant to this Agreement will be those prices calculated as set forth in Appendix A and Appendix B. During the Term of this Agreement, LIPA will make monthly payments to GENCO consisting of an amount equal to: (i) the Monthly Capacity Charge, (ii) the Monthly Variable Charge, (iii) the Monthly Ancillary Service Charge, (iv) the Monthly Capacity Payment Adjustment Charge and (v) the Monthly Variable Adjustment Charge.~~

~~**8.1.1. Monthly Capacity Charge.** The Monthly Capacity Charge is 1/12 of the annual Capacity Charge as set forth in Appendix A. The annual Capacity Charge will compensate GENCO for its fixed costs of generating Electricity from the Generating Facilities (including associated common costs) including: (a) return on investment, and depreciation for the undepreciated cost of the Generating Facilities, (b) completed capital additions approved in accordance with Article 9 including Allowance for Funds Used During Construction (AFUDC) (c) insurance, (d) income taxes (federal, state, local, net or~~



gross), (e) property and all other taxes, (f) fixed operations and maintenance costs, including an allowance for scheduled major maintenance and overhauls, (g) research and development costs and (h) administration costs. Generation charges will not be increased as a result of any step-up in the book or tax basis of the assets. In establishing the depreciation schedule for the recovery of the costs of existing plant and approved capital additions thereto, the Parties will commission an engineering and economic depreciation study which reflects the age, condition, and market circumstances which influence the remaining economic lives of the Generating Facilities. The results of such depreciation study will be taken into account in determining the proper depreciation schedule and resulting depreciation charges to be included in the filing of the FERC regulated Capacity Charge component of the formula rate described in this Article 8. The annual Capacity Charge will exclude demolition costs, environmental remediation costs related to demolition and site restoration costs in excess of amounts recovered in GENCO's retail rates applicable as of March 1997 and recovered as part of GENCO's depreciation charge, and charges for starts, fired hours of operation and fuel swaps as defined in Appendix B after meeting the threshold levels established in Appendix B.

~~**8.1.2. Monthly Variable Charge.**~~ The Monthly Variable Charge will be based on the variable operation and maintenance costs as set forth in Appendix A, multiplied by the actual MWh of operation of the Generating Facilities. The variable operation and maintenance costs include those materials, supplies and maintenance costs, environmental fees or charges, and labor costs, if any, which vary directly with the amount of energy generated. Variable operation and maintenance costs do not include charges for fixed operation and maintenance costs nor charges for starts, fired hours of operation and fuel swaps defined in Appendix B after meeting threshold levels established in Appendix B. Fuel required to operate the Generating Facilities for the purpose of providing energy will be provided in accordance with the provisions of the Energy Management Agreement and, accordingly, there will be no charge for fuel.

~~**8.1.3. Monthly Ancillary Service Charge.**~~ LIPA will pay for any costs incurred by GENCO in providing Ancillary Services to LIPA, if any such services are required by LIPA which are not otherwise compensated by LIPA through the Monthly Capacity Charge or the Monthly Variable Charge or otherwise, such charge defined as the "Monthly Ancillary Service Charge." Fuel, if any, required to operate the Generating Facilities for the purpose of providing Ancillary Services will be provided in accordance with the provisions of the Energy Management Agreement and, accordingly, there will be no charge for fuel.

~~**8.1.4. Monthly Capacity Payment Adjustment Charge.**~~ The Monthly Capacity Payment Adjustment Charge will provide for the payment by LIPA to GENCO of non-variable related expenses net of insurance proceeds, that can not be planned for with any certainty and are outside the control of GENCO, including extraordinary uninsured damage from storms and other acts of God, catastrophic failure of one or more units of a Generating Facility, and environmental compliance (for events that were not planned for and not of a type covered by any contingency in the applicable budget), provided that all capital expenditures are subject to approval by LIPA as provided in Article 9.4. Incremental costs associated with the retirement of a Generating Facility, as set forth in Section 8.3, or through a Ramp-Down of a Generating Facility in accordance with Article 11 of this Agreement may also be included in the Monthly Capacity Payment Adjustment Clause.

~~**8.1.5. Monthly Variable Payment Adjustment Charge.**~~ The Monthly Variable Payment Adjustment Charge will provide for the payment of starts, fired hours of operation, and fuel swaps defined in Appendix B after meeting the threshold levels established in Appendix B. Charges incurred for starts, fired hours of operation and swaps after meeting the threshold levels will be billed in total to LIPA by GENCO immediately following the month incurred in accordance with Section 8.5.

~~**8.1.6. NOx and SOx Emission Credits.**~~ GENCO shall apply to the Generating Facilities all NOx, SOx and other air emission credits owned by GENCO or attributable to the Generating Facilities, the cost of which to LIPA shall be included at cost without markup in the Monthly Capacity Charge to the extent such costs are fixed costs and in the Monthly Variable Charge to the extent such costs vary with levels of generation. Sixty seven percent (67%) of any sale or other disposition of emission credits which are excess to the needs of the operation of the Generating Facilities shall be credited to the annual charges to LIPA under the Agreements. GENCO will receive thirty three percent (33%) of the net proceeds of any

~~such sale or disposition of emission credits. Parent shall provide LIPA with notice of its intention to sell or otherwise dispose of emission credits in order to allow LIPA sufficient time to submit a bid for such credit, if it so chooses.~~

~~**8.2. Power Plant Electric Use.** It is recognized and agreed that the Generating Facilities require electricity for operating auxiliary systems. This electricity shall be provided by the specific generating units located at the appropriate Generating Facilities and/ or from LIPA's T&D System. Any charges from LIPA to GENCO for this auxiliary power from LIPA's T&D System, will be charged to GENCO at non-discriminatory rates, and such charges will be added, without any markup thereto, to the Monthly Variable Charge.~~

~~**8.3. Generating Facility Major Failure.** LIPA and GENCO may mutually agree to cease operating any Generating Facility, due to a major failure of such Generating Facility that the Parties mutually agree is uneconomic to repair. Upon mutual agreement, the Parties may elect to either mothball or retire such a Generating Facility.~~

~~In the event the Parties mutually agree to mothball such a Generating Facility, with or without preserving the operability of such Generating Facility, LIPA will continue to pay the associated Capacity Charge which will reflect any net cost reduction achieved from the mothballing of such Generating Facility.~~

~~In the event the Parties mutually agree that a Generating Facility should be retired and decommissioned, LIPA will pay GENCO the remaining unrecovered net plant cost of such Generating Facility, including any unreimbursed approved capital expenditures that have been made and reasonably incurred demolition costs, site restoration costs and any other costs associated with retiring such Generating Facility net of site restoration costs recovered in rates together with accumulated interest on reserves carried by Long Island Lighting Company for such site restoration costs, if any, over the life of such Generating Facility. LIPA will have the option to make such payment to GENCO immediately following the decision to retire such Generating Facility or agree to a payment schedule over the remaining term of the Agreement, including interest through an adjustment to the Monthly Capacity Payment Adjustment Clause.~~

~~**8.4. Incentives/Disincentives.** The incentive/disincentive payments contemplated by Appendix F in this Agreement will be calculated and billed separately from the charges established in Appendix A and B no less frequently than annually.~~

~~**8.5. Payment.** GENCO will submit a monthly invoice to LIPA for the Monthly Capacity Charge by the first (1st) Business Day of the month for capacity provided during the month, consistent with the provisions in Section 8.1. GENCO will also submit monthly invoices to LIPA for the Monthly Variable Charge, and any other charges that may be required, consistent with this Article 8, by the fifth (5th) Business Day following the month of service, consistent with the provisions in this Article. Payment of the Monthly Capacity Charge invoiced amounts shall be due and payable by LIPA on the later of the tenth (10th) Business Day of the month or ten (10) Business Days after LIPA's receipt of the monthly invoice. Payment of the Monthly Variable Charge invoiced amounts and any other invoices shall be due and payable by LIPA on the later of the first Business Day following the nineteenth (19th) of the month or ten (10) Business Days of LIPA's receipt of such invoices.~~

~~All such payments shall be made in the form of immediately available funds by wire transfer to a bank or financial institution specified by GENCO or in such other form as may be reasonably requested by GENCO. The wired funds will be deemed timely paid if received by the close of business on or before the due date of such payment.~~

~~**8.6 Late Payment.** Any invoiced amount not paid by LIPA by the due date will bear interest at the Base Interest Rate.~~

## **ARTICLE 9 – BUDGETS**

### **9.1. Budget Preparation.**

~~**9.1.1. Initial Capacity and Variable Charge Determination.** Not less than a mutually agreed upon number of days prior to (a) the Closing Date and (b) the commencement of each successive five year period thereafter during the Term of this Agreement, GENCO shall prepare and submit to LIPA for review and approval a proposed Five Year Budget Plan, which shall provide details on the fixed and variable costs of operating the GENCO Generating Facilities, as set forth in Sections 8.1.1 and 8.1.2 and as described by Appendix A. The initial such budget, upon approval by LIPA, shall establish the Monthly Capacity Charge and Monthly Variable Charge for the first year of the five year period, which forms the basis for adjustment for subsequent Contract Years in the five year period in accordance with Appendix A. The budget plan for the first Contract Year of the first Five Year Budget Plan will be based upon the agreed upon disaggregated generation cost elements relating to the Generating Facilities (including associated common costs) and contained in the proposed 1997 rate year budget in the GENCO 1996 rate case filing with the New York State Public Service Commission, updated for known changes in facts and circumstances, adjusted to the First Contract Year and as set forth in Appendix A. Such budget shall also consider actual historical results prepared on a comparable disaggregated basis for 1996 and thereafter up to the date of adoption of such budget. For subsequent Contract Years the Monthly Capacity Charge and Monthly Variable Charge will be based upon the previous year as adjusted in accordance with indices and approved capital improvement budgets as set forth in Appendix A.~~

~~**9.1.2. Five Year Capital Improvement Budgets.** GENCO shall annually prepare and submit to LIPA a rolling Five Year Capital Improvement Budget for incremental capital expenditures and associated rate adjustments for LIPA's review and approval. Each Five Year Budget Plan shall consist of five individual Contract Year Budget Plans.~~

~~**9.2. Budget Review.** Not more than a mutually agreed upon number of days subsequent to LIPA's receipt of the proposed Five Year Budget Plan and/ or rolling Five Year Capital Improvement Budget from GENCO, LIPA shall provide GENCO with any requested changes, additions, deletions or revisions. The GENCO Representative and LIPA Representative will employ reasonable efforts to agree upon a final Five Year Capital Improvement Budget by a mutually agreed upon number of days before the commencement of the initial Contract Year and to approve the first year of the rolling Five Year Capital Improvement Budget a mutually agreed upon number of days prior to the commencement of each Contract Year. Such approved budget for the initial Contract Year (a "Contract Year Budget") shall be effective throughout the Contract Year, subject to modifications as provided in Section 9.4. It is the intent of the Parties that the amounts provided in the Five Year Budget Plan and rolling Five Year Capital Improvement Plan for operation and maintenance expenses and capital expenditures will be sufficient to provide GENCO (or its affiliate, as the case may be) no less of an opportunity to maintain the DMNC, Availability and Heat Rate target levels (as defined in Appendix F) than GENCO has at the execution of this Agreement, and to otherwise maintain the Generating Facilities in good working order, consistent with Prudent Utility Practices, provided that LIPA shall have the final right to determine whether GENCO should proceed with specific capital projects. In the event that LIPA does not approve amounts for operating and maintenance expenses and capital expenditures that provide GENCO (or its affiliate, as the case may be) with the same opportunity to maintain the DMNC, Availability and Heat Rate target levels (as defined in Appendix F) as GENCO has at the execution of this Agreement, such target levels shall be equitably adjusted.~~

~~**9.3 Failure To Adopt Contract Year Budget.** If the Parties are unable to reach agreement concerning all or any portion of the Contract Year Budget for the initial Contract Year of a Contract Year Budget Plan or the first year of the Five Year Capital Improvement Budget as contemplated in Section 9.2, those portions of the Contract Year Budget that are in dispute for such Contract Year shall be resolved in a proceeding before the FERC. Those portions of the Contract Year Budget not in dispute shall become effective.~~

~~**9.4. Capital Improvement Budget Performance.** GENCO will provide to LIPA, on a quarterly basis, a report of actual total capital improvement costs versus the approved capital expenditures in the Five Year Capital Improvement Budget. GENCO will prepare a detailed explanation outlining variations of more than ten (10) percent and one million dollars (\$1,000,000) from the Five Year Capital Improvement Budget. GENCO will promptly notify LIPA when an event occurs, or is anticipated to occur, which would result in any required unbudgeted capital expenditures. As soon as practical, GENCO will provide~~

an explanation and estimate of such unforeseen incremental costs, as well as a proposal for modification of the applicable Monthly Capacity Charge to recover such costs. LIPA will review and respond to such explanation and Capacity Charge modification proposal within thirty (30) days after receipt. If the parties are unable to reach agreement, this dispute shall be resolved by a final and non appealable order of FERC in a proceeding under the Federal Power Act.

#### **ARTICLE 10 – INCENTIVES/ DISINCENTIVES**

**10.1. Incentives/Disincentives.** ~~Four performance incentives/ disincentives are established under this Agreement: DMNC, Availability, Heat Rate, and Property Taxes. Each of these incentives/ disincentives mechanisms are set forth in Appendix F.~~

#### **ARTICLE 11 – CAPACITY RAMP DOWN**

**11.1. Capacity Ramp Down Option.** ~~Beginning in Year Seven, LIPA may determine to reduce (“Ramp Down”) the amount of capacity purchased from GENCO. In such an event, LIPA shall immediately reimburse GENCO for the Capacity Charges in the amount set forth below which would have been recovered from LIPA over the remaining portion of the original term of this Agreement.~~

~~The Ramp Down will be an aggregate potential reduction amount of no greater than 1500 MW. The Ramp Down schedule is as follows:~~

Capacity Block	Year*	Units	Approximate Summer Capacity DMNC
1	7-9	Far Rockaway 4 Glenwood 4 & 5	300 MW
2	10-11	E.F. Barrett 1 & 2	380 MW
3	12-13	Pt. Jefferson 3 & 4	380 MW
4	14-15	Northport 1	380 MW

~~\* Year Seven begins on the sixth anniversary of the Closing Date.~~

~~If economic conditions change during the term of this Agreement, the order of the above Ramp Down schedule may be changed if mutually agreed upon by the Parties. The Ramp Down amount shall be for the full amount of the capacity in each agreed upon capacity block as set forth above.~~

~~If LIPA exercises this option in years 7 through 10 of this Agreement, LIPA will immediately pay GENCO 100 percent of the present value, at the time the Ramp Down option is exercised, of all the related Capacity Charges, that it would have otherwise received for that capacity block of unit(s) which was ramped down, for the remainder of the term of this Agreement, adjusted for the removal of net salvage as used in the depreciation calculation. GENCO will be entitled to these payments regardless of the future disposition of the Generating Facilities. GENCO will have the responsibility for all costs for demolition, environmental remediation and site restoration.~~

~~If LIPA exercises this option in subsequent years, the recovery percentage will be reduced for such capacity block(s) through the end of the term of this Agreement as follows:~~

Year Option Exercised	Fixed Cost Reduction
11	12.5%

<del>12</del>	<del>25.0%</del>
<del>13</del>	<del>37.5%</del>
<del>14</del>	<del>50.0%</del>
<del>15</del>	<del>62.5%</del>

If LIPA exercises this option, GENCO will be entitled to the fixed cost reduced by the above percentages regardless of the future disposition of any released capacity. The present value will be determined using GENCO's weighted cost of capital used in the Capacity Charge to LIPA.

GENCO may use any capacity released pursuant to this option to bid on new LIPA capacity requirements or on LIPA's capacity requirements to replace other Ramp Down capacity. If GENCO wins such bid, it will be paid its bid price.

If GENCO continues to operate the ramped down unit, GENCO will use reasonable efforts to market the released capacity. Allocation of profits from Off System Sales of capacity and energy from non-ramped down and ramped down units during the term of this Agreement shall be shared based on the following schedule:

<del>Non Ramped Down Capacity</del>	<del>Ratio: LIPA / GENCO</del>
<del>Years 1 to 15</del>	<del>67% / 33%</del>
<del>Ramped Down Capacity</del>	<del>Ratio: LIPA / GENCO</del>
<del>Years 7 to 10</del>	<del>67% / 33%</del>
<del>Year 11</del>	<del>60% / 40%</del>
<del>Year 12</del>	<del>53% / 47%</del>
<del>Year 13</del>	<del>46% / 54%</del>
<del>Year 14</del>	<del>39% / 61%</del>
<del>Year 15</del>	<del>33% / 67%</del>

The profits for any capacity sales from such Ramp Down capacity will be based on all costs required for such sale that have not been recovered by GENCO. Such recovery is understood to include any prepayment by LIPA of fixed O&M costs. If LIPA's exercise of this option results in operational inefficiencies at Northport, the Capacity Charges will be adjusted to reflect demonstrable cost increases due to such inefficiencies.

## ~~ARTICLE 12 – TERM and TERMINATION~~

**~~12.1. Term.~~** The Term of this Agreement shall commence on the Closing Date and, except as provided in Article 4 and as otherwise provided herein, shall remain in full force and effect for an initial term of fifteen (15) years from such Closing Date. At the end of the Term of this Agreement, LIPA may renew this Agreement, for all capacity upon which it has not exercised its Ramp Down option, under substantially the same terms and conditions as set forth herein, including but not limited to the continuation of a Ramp Down option. This Agreement (other than Article 4) shall terminate upon the purchase of the Generating Facilities by LIPA under the Generation Purchase Right Agreement attached as Exhibit D to the Merger Agreement.

**~~12.2. Termination For Cause by GENCO.~~** GENCO shall have the right to terminate this Agreement for cause after an Event of Default determined in accordance with the provisions of this Section 12.2 shall have occurred.

~~**12.2.1 Events of LIPA Default Defined.** Each of the following shall constitute an Event of Default on the part of the LIPA for which GENCO may terminate this Agreement upon compliance with the notice and cure provisions set forth below:~~

~~(1) Failure to Pay. The failure of LIPA to pay undisputed amounts owed to GENCO under this Agreement within 90 days of such amounts having become due.~~

~~(2) Failure to Comply with Agreement. The failure or refusal by LIPA substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by Force Majeure except that no such failure or refusal to pay or perform in clauses (1) and (2) of this Section 12.2(A) shall constitute an Event of Default giving GENCO the right to terminate this Agreement for cause under this Section unless:~~

~~(a) GENCO has given prior written notice to LIPA stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of LIPA and which will, in its opinion, give GENCO a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and~~

~~(b) LIPA has neither challenged in an appropriate forum GENCO's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time but not more than 60 days from the date of the notice given pursuant to clause (a) of this subsection (but if LIPA shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as LIPA is continuing to take such steps to correct such default).~~

~~**12.3. Termination For Cause by LIPA.** LIPA shall have the right to terminate this Agreement for cause after an Event of Default determined in accordance with the provisions of this Section 12.3 shall have occurred.~~

~~**12.3.1 Events of GENCO Default Defined.** (1) Events of Default Not Requiring Cure Opportunity for Termination. Each of the following shall constitute an Event of Default on the part of GENCO for which LIPA may terminate this Agreement without any requirement of cure opportunity:~~

~~(a) Change of Control of GENCO. Change of Control of GENCO or the Guarantor has occurred; provided, however, that the combination effectuated under the Merger Agreement shall not constitute a Change of Control of GENCO for purposes of this provision.~~

~~(b) Voluntary Bankruptcy. The written admission by GENCO or the Guarantor that it is bankrupt, or the filing by GENCO or the Guarantor of a voluntary petition under the Federal Bankruptcy Code, or the consent by GENCO or the Guarantor to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or the making by GENCO or the Guarantor of any arrangement with or for the benefit to its creditors involving an assignment to a trustee, receiver or similar fiduciary, regardless of how designated, of all or a substantial portion of GENCO's or the Guarantor's property or business.~~

~~(c) Involuntary Bankruptcy. The final adjudication of GENCO or the Guarantor as bankrupt after the filing of an involuntary petition under the Federal Bankruptcy Code, but no such adjudication shall be regarded as final unless and until the same is no longer being contested by GENCO or the Guarantor nor until the order of the adjudication shall be regarded as final unless and until the same is no longer being contested by GENCO or the Guarantor nor until the order of the adjudication is no longer appealable.~~



~~(d) Credit Enhancement. Failure of GENCO to supply, maintain, renew, extend or replace the credit enhancement required under Article 18 hereof in the event there is a Material Decline in the Guarantor's Credit Standing, as defined in Section 18.1.2. hereof.~~

~~(e) Letter of Credit Draw. Failure of GENCO to supplement, replace or cause to be reinstated the letter of credit as described in Section 18.1.3. hereof within 30 days following draws equal to, in the aggregate, 50% of the face value thereof.~~

~~(2) Events of Default Requiring Cure Opportunity for Termination. Each of the following shall constitute an Event of Default on the part of GENCO for which the LIPA may terminate this Agreement upon compliance with the notice and cure provisions set forth below:~~

~~(a) Failure to Comply with Agreement. The failure or refusal by GENCO to substantially perform any material obligation under this Agreement except that no such failure or refusal shall constitute an Event of Default giving LIPA the right to terminate this Agreement for cause under this subsection unless:~~

~~(i) LIPA has given prior written notice to GENCO or the Guarantor, as applicable, stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of GENCO or the Guaranty on the part of the Guarantor and which will, in its opinion, give LIPA a right to terminate this Agreement for cause under this Section unless such default is corrected within a reasonable period of time, and~~

~~(ii) GENCO or the Guarantor, as applicable, has neither challenged in an appropriate forum the LIPA's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such default within a reasonable period of time, but not more than 60 days, from receipt of the notice given pursuant to clause (i) of this subsection (but if GENCO or the Guarantor shall have diligently taken steps to correct such default within a reasonable period of time, the same shall not constitute an Event of Default for as long as GENCO or the Guarantor is continuing to take such steps to correct such default).~~

#### **12.4. Procedure For Termination For Cause.**

~~(a) Two Year Notice. If any Party shall have a right of termination for cause in accordance with either Section 12.2 or Section 12.3, the same may be exercised by notice of termination given to the Party in default at least two years prior to (or, in the case of a bankruptcy or insolvency default or a Change of Control, simultaneously with or, in the case of an Event of Default specified in clause (d) or (e) of Section 12.3.1 hereof, six months) the date of termination specified in such notice (the "Termination Date").~~

#### **12.5. Non-Binding Mediation; Arbitration.**

~~(a) Dispute Resolution. Any dispute arising out of or relating to this Agreement shall be resolved in accordance with the procedures specified in this Section, which shall constitute the sole and exclusive procedures for the resolution of such disputes.~~

~~(b) Negotiation and Non Binding Mediation. The parties agree to use their best efforts to settle promptly any disputes or claims arising out of or relating to this Agreement through negotiation conducted in good faith between executives having authority to reach such a settlement. Either party hereto may, by written notice to the other party, refer any such dispute or claim for advice or resolution by mediation by an Independent Engineer, financial advisor or other suitable mediator. The parties shall mutually agree on the selection of such mediator. If the parties are unable to agree, the parties shall each designate a qualified mediator who, together, shall choose the mediator for the particular dispute or claim. If the mediator is unable, within 30 days of such referral, to reach a determination as to the dispute that is acceptable to the parties hereto, the matter shall be referred to applicable Legal Proceedings.~~

~~All negotiations and mediation discussions pursuant to this paragraph 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 state rules of evidence.~~

~~(c) Arbitration. Any dispute arising out of or relating to this Agreement or the breach, termination, or validity thereof, except for a termination due to a Change in Control or due to a bankruptcy or insolvency or a failure to provide, renew, reinstate or replace the credit enhancement required pursuant to Section 18.1 or a dispute concerning the charging or establishment of rates under this Agreement which dispute has not been resolved by a negotiation or mediation as provided in subsection (B) hereof within 30 days from the date that either negotiations or mediation shall have been first requested, shall be settled by arbitration before three independent and impartial arbitrators (the "Arbitrators") in accordance with the then current rules of the American Arbitration Association, except to the extent such rules are inconsistent with any provision of this Agreement, in which case the provisions of this Agreement shall be followed, and except that the arbitrations under this Agreement shall not be administered by the American Arbitration Association. The Arbitrators shall be (a) independent of the parties and disinterested in the outcome of the dispute, provided that residents of Long Island shall not be deemed to be interested merely by virtue of their residence on Long Island, (b) attorneys, accountants, investment bankers, commercial bankers or engineers familiar with contracts governing the operation of electric utility assets, and (c) qualified in the subject area of the issue in dispute. The Arbitrators shall be chosen by the parties, with each party choosing one arbitrator and those arbitrators choosing the third Arbitrator. Judgment on the award rendered by the Arbitrators may be entered in any court in the State of New York having jurisdiction thereof. If either party refused to participate in good faith in the negotiations or mediation proceedings described in subsection 12.5(B) hereof, the other may initiate arbitration at any time after such refusal without waiting for the expiration of the applicable time period. Except as provided in subsection 12.5(D) hereof relating to provisional remedies, the Arbitrators shall decide all aspects of any dispute brought to them including attorney disqualification and the timeliness of the making of any claim.~~

~~(d) Provisional Relief. Either party may, without prejudice to any negotiation, mediation, or arbitration procedures, proceed in any court to obtain provisional judicial relief if, in the such party's sole discretion, such action is necessary to avoid imminent irreparable harm, to provide uninterrupted electrical and other services, or to preserve the status quo pending the conclusion of the dispute procedures specified in this Section.~~

~~(e) Awards. The Arbitrators shall have no authority to award punitive damages or any other damages aside from the prevailing party's actual and consequential damages plus interest at the Base Interest Rate from the date such damages were incurred. The Arbitrators shall not have the authority to make any ruling, finding, or award that does not conform to the terms and conditions of this Agreement. The Arbitrators may award reasonable attorneys' fees and costs of the arbitration. The Arbitrator's award shall be in writing and shall be set forth the factual and legal bases for the award.~~

~~(f) Information Exchange. The Arbitrators shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, the production of requested documents, the exchange of summaries of testimony of proposed witnesses, and the examination by disposition of parties. The parties hereby agree to produce all such information as ordered by the Arbitrators and shall certify that they have provided all applicable information and that such information is true, accurate and complete.~~

~~(g) Site of Arbitration. The site of any Arbitration brought pursuant to this Agreement shall be either Mineola, New York or Hauppauge, New York.~~

### **ARTICLE 13 – DESIGNATION OF REPRESENTATIVES**

**~~13.1. LIPA Representative.~~** ~~Within thirty (30) Business Days after the execution of this Agreement, LIPA shall select a Representative (the "LIPA Representative"). The LIPA Representative will act for and on behalf of LIPA on all matters concerning this Agreement for which LIPA has authorized such agent to~~



~~act. LIPA will advise GENCO as to the scope of such authorization. In all such matters, LIPA shall be bound, to the extent permitted by Applicable Law by the written communications, directions, requests and decisions made by the LIPA Representative. LIPA shall promptly notify GENCO in writing of LIPA's Representative selection and any subsequent replacement(s).~~

~~**13.2. GENCO Representative.** Within thirty (30) Business Days after the execution of this Agreement, GENCO will select a Representative (the "GENCO Representative") subject to LIPA's approval. The GENCO Representative will act for and on behalf of GENCO in all matters concerning this Agreement for which GENCO has authorized such agent to act. In all such matters, GENCO shall be bound by the written communications, directions, requests and decisions made by GENCO Representative. GENCO will advise LIPA as to the scope of such authorization. GENCO shall promptly notify LIPA in writing of GENCO's Representative selection and any subsequent replacement(s).~~

## **ARTICLE 14 – METERING**

### **14.1. Electric Metering.**

~~**14.1.1. Electric Metering Equipment.** If the existing meters are inadequate to meet the electricity measuring requirement set forth below, GENCO at its own expense (but subject to cost recovery provision of Article 8 and 9) shall procure, own, install, test, operate and maintain industry standard revenue meters and instrument transformers; shall install metering mounting equipment; shall install and maintain a dedicated datalink for telemetry purposes to measure electricity Delivered to LIPA by GENCO. The aforementioned equipment (the "Metering Equipment") shall be procured, tested, installed, operated and maintained by GENCO, or GENCO's designee, in accordance with Prudent Utility Practice. LIPA shall not breach the integrity of the wiring or instrument transformers for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring Electricity Delivered from GENCO. ("LIPA's Metering Equipment").~~

~~**14.1.2 Testing of Metering Equipment.** GENCO shall test the Metering Equipment for accuracy every two (2) years or at any time within thirty (30) days after a written request by LIPA if LIPA reasonably believes the metering measurement accuracy of the Metering Equipment is inaccurate by two (2) percent. At LIPA's option, such tests may be witnessed by a LIPA representative. Metering measurement accuracy between ninety eight (98) and one hundred and two (102) percent shall be deemed acceptable. In the event any Metering Equipment is found outside the acceptable limits of accuracy specified in the prior sentence, it shall be immediately repaired, calibrated or replaced. Upon completion of any examination, maintenance, repair, calibration or replacement of any Metering Equipment, such equipment shall be, sealed by GENCO.~~

~~**14.1.3 Meter Reading.** Meter readings shall be conducted every month or as otherwise mutually agreed by the Parties.~~

~~**14.1.4 Metering Inaccuracies.** When, as the result of a test pursuant to section 14.1.2, the Metering Equipment is found to be inaccurate by more than two (2) percent or the Metering Equipment is otherwise functioning improperly, the correct amount of Electricity Delivered to LIPA for the period during which such inaccurate measurements were made, shall be determined as follows:~~

~~(a) GENCO and LIPA may mutually agree to use the readings of LIPA's Metering Equipment, if any, to calculate the correct amount of Electricity Delivered. LIPA shall furnish the most recent test and calibration documentation for LIPA's metering equipment. If LIPA's meters are utilized, an adjustment for transmission and transformation losses shall be made to such meter readings, as applicable;~~

~~(b) If LIPA's Metering Equipment has not been installed, or if it is found to be unacceptable, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty percent (50%) of the time between the last meter reading and the discovery of the inaccuracy.~~

## **14.2. Gas Metering.**

~~**14.2.1. Gas Metering Equipment.** If the existing meters are inadequate to meet the gas measuring requirements set forth below, GENCO at its own expense (but subject to the cost recovery provision of Articles 8 & 9 shall procure, own, install, operate and maintain industry standard revenue grade meters; install, operate and maintain, at the Receipt Points, a dedicated datalink for telemetry purposes to measure gas fuel delivered by GENCO or other gas suppliers. The aforementioned equipment (the "Gas Metering Equipment") shall be installed, operated and maintained by GENCO, or GENCO's designee, in accordance with prudent gas utility practice. LIPA shall not breach the integrity of the wiring or piping for any reason. LIPA, at its own expense, may own, install and maintain other meters and associated equipment for purposes of measuring gas Delivered from GENCO. ("LIPA's Gas Metering Equipment").~~

~~**14.2.2. Testing of Self-Checking Gas Metering Equipment.** GENCO shall test the Metering Equipment for accuracy at any time within thirty (30) days after a written request by LIPA, if LIPA reasonably believes the metering measurement accuracy of the Metering Equipment is inaccurate by two (2) percent. At LIPA's option, such tests shall be witnessed by LIPA representative. Metering measurement accuracy between ninety eight (98) and one hundred and two (102) percent shall be deemed acceptable. In the event any Metering Equipment is found outside the acceptable limits of accuracy specified in the prior sentence, it shall be immediately repaired, recalibrated or replaced. Upon completion of any examination, maintenance, repair, recalibration or replacement of any Metering Equipment, such equipment shall be, sealed by GENCO.~~

~~**14.2.3. Testing of Non-Self-Checking Gas Metering Equipment.** At LIPA's expense, GENCO shall test the Metering Equipment for accuracy on a regular schedule that conforms with industry revenue metering practices, and which is prudent to maintain acceptable metering accuracy or at any time within thirty (30) days after a written request by LIPA, if LIPA reasonably believes the metering measurement accuracy of the Metering Equipment is inaccurate by two (2) percent. At LIPA's option, such tests shall be witnessed by LIPA representative. Metering measurement accuracy between ninety eight (98) and one hundred and two (102) percent shall be deemed acceptable. In the event any Metering Equipment is found outside the acceptable limits of accuracy specified in the prior sentence, it shall be immediately repaired, recalibrated or replaced at the expense of LIPA. Upon completion of any examination, maintenance, repair, recalibration or replacement of any Metering Equipment, such equipment shall be, sealed by GENCO.~~

~~**14.2.4. Gas Meter Reading.** Meter readings shall be conducted every month, or as otherwise mutually agreed by the Parties.~~

~~**14.2.5. Gas Metering Inaccuracies.** When, as the result of a test pursuant to section 14.2.2 and/or 14.2.3, the Gas Metering Equipment is found to be inaccurate by more than two (2) percent or the Gas Metering Equipment is otherwise functioning improperly, the correct amount of Gas delivered to LIPA for the period during which such inaccurate measurements were made, shall be determined as follows:~~

~~(a) GENCO and LIPA may mutually agree to use the readings of LIPA's Metering Equipment, if any, to calculate the correct amount of Gas Delivered. LIPA shall furnish the most recent test and calibration documentation for LIPA's metering equipment. If LIPA's meters are utilized, and adjustments for supercompressibility (following AGA standards) and base pressure should be made to such meter readings, as applicable.~~

~~(b) If LIPA's Metering Equipment has not been installed, or if it is found to be inaccurate, then the Parties shall jointly prepare an estimate of the correct reading on the basis of available information, including the assumption that if the duration of the metering inaccuracy cannot be determined, such duration shall be deemed to have persisted for fifty percent (50%) of the time between the last meter reading and the discovery of the inaccuracy.~~

~~**14.3. Oil Fuel Measurement.** GENCO will perform monthly Fuel oil tank gauging to determine the amount of No. 6 Fuel oil, No. 2 Fuel oil and kerosene in storage at each Generating Facility. The gauging~~

~~will occur on a pre-determined date prior to the end of the month. Usage from the gauging date until the last calendar day of the month will be calculated based on the average monthly Heat Rate at each Generating Facility and the actual generation between the gauging date and the end of such month. This calculated amount will be subtracted from the oil in storage on the gauging day to determine the oil in storage on the last day of the month. Fuel oil deliveries during each month will be measured at the time of delivery. The difference between the oil in storage at the beginning and end of the month will be added to the oil deliveries received during the month to calculate the net oil consumed for the month, in accordance with the current methodology of calculating Generating Facility Fuel oil consumption. Changes in unit operation may necessitate mutually agreed to modifications to this procedure.~~

## **ARTICLE 15 – REPORTS**

**~~15.1. Reports.~~** ~~Twenty Business Days following the end of each quarter, GENCO shall submit to LIPA a report summarizing the Electricity Delivered, Fuel burned, the status of maintenance on the Generating Facilities, the status of all construction projects, Contract Year Budget Plan performance and such other information as the Parties may mutually agree.~~

**~~15.2. Other Information.~~** ~~(a) Upon LIPA's reasonable request, GENCO shall submit to LIPA any other material information in GENCO's possession concerning the Generating Facilities. If such requested information is not in GENCO's possession, GENCO will obtain and prepare such information, to the extent possible, and charge LIPA for all additional reasonable costs incurred to obtain and prepare such information.~~

~~(b) Prior to the Closing Date, GENCO shall provide to LIPA the following information, which information shall be certified by GENCO to be to the best of its knowledge, based on reasonably available information~~

- ~~(i) — the historical fixed costs for each year from 1994 through 1996 associated with the Generating Facilities, broken down by the categories of costs set forth in Section 8.1.1(a) through (h);~~
- ~~(ii) — the historical costs of complying with all Government Approvals applicable to the Generating Facilities.~~

**~~15.3. Litigation; Permit Lapses.~~** ~~Promptly upon obtaining knowledge thereof, each Party shall submit to the other Party written notice of (and, upon request, copies of any relevant non-privileged documents in the Party's possession relating to): (i) any material litigation, claims, disputes or actions actually filed, or any material litigation, claims, disputes or actions which are threatened, concerning in each case this Agreement or the Generating Facilities; (ii) any actual refusal to grant, renew or extend, or any action pending or any action filed with respect to, the granting, renewal or extension of any permit or any material threatened action regarding the same in this Agreement or the Generating Facilities; (iii) any dispute with any Governmental Authority relating to this Agreement or the Generating Facilities of GENCO or LIPA; and (iv) without regard to their materiality, all penalties or notices of violation issued by any Governmental Authority relating to this Agreement or the Generating Facilities.~~

## **ARTICLE 16 – GENERAL SERVICE REQUIREMENTS**

### **~~16.1. General Service Requirements.~~**

**~~16.1.1. Standard of Performance.~~** ~~In performing its obligations under this Agreement, GENCO shall operate in accordance with Prudent Utility Practice and all Governmental Rules and shall seek to minimize costs in accordance with Prudent Utility Practice and Governmental Rules.~~

**~~16.1.2. Limitation of Liability.~~** ~~GENCO liability for any failure to comply with Section 16.1.1 shall be limited to the performance incentives provided in Article 10, except as set forth in Article 19.~~

~~16.1.3. Accounting Controls.~~ GENCO shall provide all accounting, bookkeeping, and administrative services in connection with the Electricity Costs, such accounting to be consistent with the Federal Energy Regulatory Commission Uniform System of Accounts and Generally Accepted Accounting Principles (GAAP) consistently applied. In areas of conflict, FERC accounting principles apply. All books and records upon which any rates or charges under this Agreement are based shall be made available by GENCO for audit by LIPA.

## **ARTICLE 17 – INSURANCE**

~~GENCO shall maintain an insurance program with respect to the Generating Facilities and its activities under this Agreement similar in all material respects to the program described in Appendix 4 – Insurance of the Management Services Agreement dated the date hereof between LIPA and the Energy Manager.~~

## **ARTICLE 18 – CREDIT ENHANCEMENT**

### **18.1 Credit Enhancement in Certain Circumstances.**

~~18.1.1. Limitations.~~ After the Closing Date, GENCO agrees that it will remain an affiliate of the Guarantor.

~~18.1.2. Material Decline in the Guarantor's Credit Standing.~~ For purposes of this Section, a “Material Decline in the Guarantor's Credit Standing” shall be deemed to have occurred if (1) in the event that the Guarantor has long term senior debt outstanding which has a credit rating by a Rating Service, such rating by a Rating Service is established or is reduced below investment grade level or (2) in the event the Guarantor does not have long term senior debt outstanding which has a credit rating by a Rating Service, and the Guarantor has a credit rating by a Rating Service, such credit rating is established or reduced below investment grade level, or (3) in the event the Guarantor does not have long term senior debt outstanding which has a credit rating by a Rating Service and the Guarantor does not have a credit rating by a Rating Service, in which event the Guarantor shall seek a credit rating for the Guaranty from a Rating Service, such rating is established or is reduced below investment grade level or if no rating is established. GENCO immediately shall notify LIPA of any Material Decline in the Guarantor's Credit Standing.

~~18.1.3. Credit Enhancement.~~ If, at any time during the Term hereof, a Material Decline in the Guarantor's Credit Standing occurs, GENCO shall immediately notify LIPA's Representative thereof and, within 30 days after such occurrence, shall provide credit enhancement of its obligations hereunder at its sole cost and expense in the form either of (1) an unconditional guarantee of all of GENCO's obligations hereunder, the Manager's obligations under the Management Services Agreement, and the Energy Manager's obligations under the Energy Management Agreement provided by a corporation or financial institution whose long term senior debt is or would be rated investment grade by a Rating Service or (2) an irrevocable letter of credit securing GENCO's obligations hereunder, the Manager's obligations under the Management Services Agreement, and the Energy Manager's obligations under the Energy Management Agreement in a face amount of \$60,000,000 provided by a financial institution whose long term senior debt is rated investment grade by a Rating Service; provided, however, that if any such letter of credit is drawn upon in the aggregate in an amount equal to 50% of the face value of such letter of credit, GENCO shall, within 30 days thereafter, supplement or replace such letter of credit with an additional letter of credit such that the total amount of such letter of credit then available equals \$60 million. The amount of such letter of credit shall be reduced by \$30 million if the Energy Management Agreement has theretofore been or is thereafter terminated and by \$ 26 million if the Management Services Agreement has theretofore been or is thereafter terminated, such obligation to continue until the expiration or termination of this Agreement, the Management Services Agreement and the Energy Management Agreement.

## **ARTICLE 19 – ALLOCATION OF RISK OF CERTAIN COSTS AND LIABILITIES.**

~~Except to the extent due to LIPA Fault (as determined by either a final non-appealable order or judgment of a court of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision), GENCO shall be responsible and liable to LIPA for, and shall not be entitled to reimbursement or cost recovery under Article 8 or otherwise from LIPA for any Loss and Expense incurred by GENCO:~~

- ~~(a) due to any gross negligence or willful misconduct by GENCO during the period commencing six months prior to the Closing Date to the extent GENCO knew or should have known of such gross negligence or willful misconduct and during the Term in carrying out its obligations hereunder,~~
  - ~~(b) due to any violation of or failure of compliance with Applicable Law by GENCO (except as provided below) during the period commencing six months prior to the Closing Date to the extent GENCO knew or should have known of such violation or failure of compliance and during the Term which materially and adversely affects
    - ~~(i) the condition or operations of the T&D System or the Generating Facilities;~~
    - ~~(ii) the financial condition of LIPA;~~
    - ~~(iii) the performance or ability of GENCO to perform its obligations under this Agreement; or~~
    - ~~(iv) the cost of providing electric service to the customers of the T&D System;~~~~
- ~~provided, however, that GENCO shall not be responsible and liable to LIPA under this clause b) with respect to any violation of, failure of compliance with, or liability under, Environmental Laws (as defined in the Acquisition Agreement) for which LIPA or GENCO may be strictly liable provided that GENCO acted in a manner consistent with Prudent Utility Practice. Notwithstanding the foregoing, GENCO shall in all events be liable for any fine or penalty arising by reason of any violation of or failure of compliance with Applicable Law for acts or omissions of GENCO not consistent with Prudent Utility Practice;~~
- ~~(c) due to any criminal violation of Applicable Law by GENCO prior to, on or after the Closing Date; or~~
  - ~~(d) due to an event which would otherwise permit recovery of a cost under Section 8.1.4 (Monthly Capacity Payment Adjustment Charge) of an excess capital expenditure under Section 9.4, that is incurred by reason of actions or omissions of GENCO not consistent with Prudent Utility Practice.~~

~~Any such action or omission identified in (a), (b), (c) or (d) shall be determined by either a final non-appealable order or judgment of a court or regulatory body of competent jurisdiction (including administrative tribunals) or a final non-appealable binding arbitration decision and shall be attributable to GENCO for purposes of the preceding sentence whether it is attributable to GENCO or to any officer, member, agent, employee or representative of GENCO or any Affiliate and any contractor, subcontractor of any tier.~~

~~The provisions of this Article 19 are intended to modify GENCO's right to receive payments under Article 8 and Appendix A.~~

## **ARTICLE 20 – PROPRIETARY INFORMATION**

**20.1. Request Not To Disclose.** ~~The parties hereto hereby acknowledge that GENCO has a proprietary interest in certain information that may be furnished pursuant to the provisions of this Agreement. GENCO acknowledges that LIPA may be required to disclose information upon request under Applicable~~

~~Law. GENCO shall have the right to request LIPA in writing not to publicly disclose any information which GENCO believes to be proprietary and not subject to public disclosure under Applicable Law, any such request to be accompanied by an explanation of its reasons for such belief. Any information which is the subject of such a request shall be clearly marked on all pages, shall be bound, and shall be physically separate from all non-proprietary information. At GENCO's request, LIPA and its agents, consultants and employees (including its consulting engineer) given access to such information shall execute and comply with the terms of a confidentiality agreement in a mutually acceptable form, subject to Applicable Law.~~

~~**20.2. LIPA's Non-Disclosure.** In the event LIPA receives a request from the public for the disclosure of any information designated as proprietary by GENCO pursuant to Section 20.1, LIPA (i) shall use reasonable efforts, consistent with applicable law, to provide notice to GENCO of the request prior to any disclosure, and (ii) shall use reasonable efforts, consistent with applicable law, to keep in confidence and not disclose such information unless it is entitled to do so pursuant to the provisions of Section 20.3. GENCO shall indemnify, hold harmless and defend LIPA against costs incurred from the withholding from public disclosure of information designated as proprietary by GENCO or otherwise requested by GENCO to be withheld.~~

~~**20.3. Permitted Disclosures.** Notwithstanding any confidential or proprietary designation thereof by GENCO, LIPA may disclose the following information (i) information which is known to LIPA without any restriction as to disclosure or use at the time it is furnished, (ii) information which is or becomes generally available to the public without breach of any agreement, (iii) information which is received from a third party without limitation or restriction on such third party or LIPA at the time of disclosure, (iv) with regard to capacity that has not been ramped down, documentation of historical Generation Facilities' operations and costs, and all costs, assumptions and supporting data associated with the determination of the FERC approved contract rate for capacity and energy under this agreement, (v) information with respect to (a) Electricity sales to LIPA by time of day, month and year, to the extent available; (b) prices paid by LIPA to GENCO for capacity, energy and any Ancillary Services under this Agreement; and (c) power plant emission information and environmental compliance information and any information required to be provided to FERC to support rate filings with FERC to the extent such information directly relates to GENCO's provision of service to LIPA under this Agreement, and (vi) following notice to GENCO pursuant to Section 20.2, information which, in the opinion of counsel for LIPA, is required to be or may be disclosed under any Applicable Law, an order of a court of competent jurisdiction, or a lawful subpoena.~~

## **ARTICLE 21 – MISCELLANEOUS PROVISIONS**

~~**21.1. Agreement.** This Agreement consists of the terms and conditions set forth in the body hereof and the Appendices and other attachments hereto. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. In the event of a conflict, variation or inconsistency between or among the Appendices, other attachments and the terms and conditions set forth in the body hereof, the terms and conditions contained in the body hereof shall govern.~~

~~**21.2. Relationship of the Parties.** GENCO is deemed to be an independent contractor hereunder and shall not be deemed as a partner, joint venturer or affiliate of LIPA.~~

~~**21.3. Assignment.** This Agreement shall not be assignable by either party without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed except LIPA may assign its interest in this Agreement to another State agency if required by or as the result of State law. Notwithstanding the foregoing sentence, nothing herein shall prevent GENCO, without LIPA's consent, from selling, assigning or transferring a pecuniary interest in any payment, revenues, proceeds, incentive, profits or income derived from this Agreement. Effective upon the Closing Date, LIPA may assign its rights, obligations and interests hereunder to Long Island Lighting Company (then a wholly owned subsidiary of LIPA) and GENCO shall assign all of its rights, obligations and interests hereunder to the Guarantor or any affiliate thereof.~~

~~**21.4. Cooperation in Financing.** Each Party shall reasonably cooperate with the other Party during negotiations with any Financing Party and will promptly execute any reasonable amendment or addition~~



~~to this Agreement required by any Financing Party, provided that neither Party shall be required to execute any amendment or addition it determines in its sole discretion to be disadvantageous in any respect.~~

## **21.5. Force Majeure.**

~~**21.5.1. Events Constituting Force Majeure.** As used in this Agreement, Force Majeure means any act, event, or condition that causes delay in or failure of performance of obligations under this Agreement, or otherwise materially and adversely affects a party's ability to perform, if such act, event or condition (i) is beyond the reasonable control of the party relying thereon, (ii) is not the result of the willful misconduct or negligent act or omission of such party, and (iii) is not an act, event or condition, the risk or consequence of which such party expressly assumed under this Agreement, including but not limited to:~~

~~(1) acts of God, accident, flood, sabotage, fire, epidemic, earthquake, or similar occurrence, act of public or foreign enemy, war and other hostilities, invasion, blockade, insurrection, rebellion, riot and disorder, strikes or labor disturbances, general arrest or restraint of government and people, civil disturbance or similar occurrence;~~

~~(2) entry of an injunctive or restraining order or judgment of any Governmental Authority, if such order or judgment is not the result of the act, or failure to act, of a party or its subcontractors or suppliers; or~~

~~(3) suspension, termination, interruption of, or failure to obtain any permit required or necessary for the construction, operation or maintenance of the Generating Facilities, provided such suspension, termination, interruption or failure is not the result of the action or inaction of a party relying thereon or its subcontractors or suppliers.~~

~~Notwithstanding the foregoing, neither the failure of a subcontractor or supplier to perform its obligations to LIPA or GENCO, which failure is not itself caused by a Force Majeure event with respect to such subcontractor or supplier, nor financial difficulty suffered by LIPA or GENCO or any subcontractor, supplier or vendor in performing its obligations, shall be deemed a Force Majeure event.~~

~~**21.5.2. Event of Force Majeure.** Except for the obligations of either party to make payments of amounts due to the other party, either party shall be excused from performance and shall not be considered to be in default in respect of any obligation under this Agreement to the extent that a failure of performance of such obligation shall be due to Force Majeure. If either party's ability to perform its obligations under this Agreement is affected by a Force Majeure, the party claiming such inability shall: (i) promptly notify the other party of such Force Majeure and its cause and confirm the same in writing within five Business Days of discovery of the event or circumstances constituting such Force Majeure; (ii) immediately supply such available information about the event or circumstances constituting the Force Majeure and the cause thereof as is reasonably requested by the other party; and (iii) immediately initiate removal of the cause of the Force Majeure or, if immediate removal is not possible, to mitigate the effect thereof.~~

~~**21.5.3. Scope.** The suspension of performance due to a Force Majeure shall be of no greater scope and no longer duration than that which is necessary. The excused party shall use its reasonable best efforts to remedy its inability to perform.~~

~~**21.6. Amendments.** No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.~~

~~**21.7. No Waiver.** It is understood and agreed that any delay, waiver or omission by GENCO or LIPA to exercise any right arising from any breach or default by GENCO or LIPA with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by GENCO or LIPA, as the case may be, of any subsequent breach or default of the same or other terms, provisions or covenants on the part of the other party.~~

~~**21.8. Notices.** Any written notice under this Agreement shall be deemed properly given if sent by registered or certified mail, return receipt requested, postage prepaid, or by nationally recognized overnight delivery service, signature required upon signed receipt, to the address specified below, unless otherwise provided for in this Agreement:~~

~~To LIPA: — Long Island Power Authority  
333 Earle Ovington Blvd.  
Uniondale, NY 11553  
Attention: Executive Director~~

~~To GENCO: — Long Island Lighting Company  
Executive Offices  
175 East Old Country Road  
Hicksville, NY 11801  
Attention: President~~

~~Either party may, by written notice to the other party, change the name or address of the person to receive notices pursuant to this Agreement.~~

**21.9. Representations and Warranties.**

~~**21.9.1. GENCO Representations and Warranties.** GENCO, as of the date of this Agreement, makes the following representations and warranties as the basis for its undertakings contained herein:~~

~~(a) After the Closing Date, any assignee of GENCO pursuant to Section 21.3 hereof will be a wholly owned subsidiary of Guarantor duly organized, validly existing and in good standing under the laws of the State of New York, is qualified to do business under the laws of the State of New York, has the power and authority to own its properties, to carry on its business as it now is being conducted, and to enter into this Agreement and carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions herein contemplated.~~

~~(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance with the provisions of this Agreement do not materially conflict with or constitute a material breach of or a material default under any of the terms, conditions or provisions of any law, any order of any court or other agency of government, the articles of incorporation or by laws of GENCO, or outstanding trust indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which GENCO is a party or by which it or any of its property is bound or result in a material breach of or a material default under any of the foregoing, and this Agreement is the legal, valid and binding obligation of GENCO enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.~~

~~(c) As of the Closing Date and throughout the Term of this Agreement, GENCO, will be in material compliance with, or will have acted in good faith and used all reasonable efforts to be in material compliance with, all laws, judicial and administrative orders, rules and regulations with respect to the ownership and operation of the Generating Facilities including but not limited to the following: all requirements to obtain and comply with the conditions of any applicable Governmental Rules, including, to the extent required, the filing of all applicable environmental impact analyses; and, if applicable and required by Environmental Law, the mitigation of all environmental impacts.~~

~~(d) As of the date provided, all historical records supplied to LIPA with respect to the Dependable Maximum Net Capability, availability and Heat Rate of each Generating Facility are to GENCO's best knowledge accurate in all material respects.~~



~~(e) To the best of GENCO's knowledge, all Governmental Approvals necessary for the full load operation of each Generating Facility with all types of fuel for which such Generating Facility is operated have been validly issued and are in full force and effect. GENCO knows of no pending action to cancel any such Governmental Approval.~~

~~**21.9.2. LIPA Representations and Warranties.** LIPA, as of the date of this Agreement, makes the following representations and warranties as the basis for its undertakings contained herein:~~

~~(a) LIPA is a corporate municipal instrumentality and political sub-division of the State of New York, has the corporate power and authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and the transactions contemplated herein and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement, and is duly authorized to execute and deliver this Agreement and consummate the transactions herein contemplated.~~

~~(b) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance with the provisions of this Agreement do not materially conflict with or constitute a material breach of or a material default under, any of the terms, conditions or provisions of any law, any order of any court or other agency of government, or any contractual limitation, corporate or partnership restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which LIPA is a party or by which it or any of its property is bound or result in a material breach of or a material default under any of the foregoing, and this Agreement is the legal, valid and binding obligation of LIPA enforceable in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.~~

~~(c) All corporate or other organization consents, authorizations, and approvals, and all other actions required for LIPA to execute, deliver and perform its obligations hereunder have been obtained or completed.~~

~~**21.10. Counterparts.** The Parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both Parties constitute one and the same instrument; and, thereafter, each counterpart shall be deemed an original instrument.~~

~~**21.11. Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New York. Any action arising out of or relating to this Agreement shall be brought in New York State Court or Federal District Court.~~

~~**21.12. Captions; Appendices.** Titles or captions of the articles contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof.~~

~~**21.13. Non-Recourse.** Except as otherwise agreed, neither party shall have any recourse against any parent, affiliate, or constituent of the other party, or the successors and assigns of such parent, affiliate or constituent (collectively, "Party Affiliates") and each party expressly waives its rights of recourse against, and releases from liability, the other party's Party Affiliates. Each party shall look solely to the other party, and the assets thereof, to effect recovery of such party's claims against the other party.~~

~~**21.14. Severability.** The invalidity or unenforceability of any provision of this Agreement shall be determined only by a court of competent jurisdiction, and the Parties hereby agree to negotiate an equitable adjustment to the invalid or unenforceable provisions with a view toward effecting the purposes of this Agreement; the validity or enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.~~

~~**21.15. Rules of Interpretation.** The terms and provisions of this Agreement shall be interpreted and construed as follows: (a) words of the masculine gender shall include corresponding words of the feminine or neuter genders and vice versa; (b) the plural shall include the singular and vice versa; (c) unless the context indicates otherwise, all references herein to Articles, Sections, paragraphs, exhibits, schedules, and Appendices shall refer, respectively, to the Articles, Sections, paragraphs, exhibits, schedules and Appendices of this Agreement; (d) the words "includes" or "including" mean "including, but not limited to" and are not limiting; (e) any reference to an agreement, a contract or any other document means the same as it may be amended, modified, supplemented or replaced from time to time, unless otherwise noted; and (f) any reference to a Person includes such Person's successors and assigns.~~

~~**21.16. Property Taxes.** After the Contract Date, GENCO, in its sole discretion, may challenge any property tax assessment on its Generating Facilities or Generating Facility Sites only if the assessment on any such challenged facilities is increased not in an appropriate proportion to the increase in value related to taxable capital additions affixed to the tax parcel between the last two tax status dates. If the tax attributable to the assessment on the Generating Facilities or Generating Facilities Sites is not included in the costs paid by LIPA or its Affiliates (e. g., gas facility located on Generating Facility Site) then GENCO, in its sole discretion, may pursue tax challenges on such assessments. This provision shall expire upon the termination of this Agreement.~~

~~In the event GENCO challenges any tax assessments on its Generating Facilities, any tax refunds received by GENCO shall be shared 25%/75% between GENCO and LIPA, respectively. GENCO shall be responsible for all preparatory efforts and litigation related costs pertaining to any such challenge, and such costs shall not be included in any charge under Article 8 or otherwise under this Agreement. This provision shall expire upon the termination of this Agreement, except that LIPA will continue to share 75% of tax refunds received after such termination to the extent that such refunds relate to property taxes for which LIPA has reimbursed GENCO under Section 8.1.1.~~

~~**21.17. Binding Effect.** This Agreement shall become binding and effective on the Closing Date and shall thereafter bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder in compliance with the provisions of Section 21.3 hereof.~~

~~IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.~~

~~LONG ISLAND POWER AUTHORITY~~

~~By: /s/ Richard M. Kessel  
Name: Richard M. Kessel  
Title: Chairman~~

~~By: /s/ Patrick Foye  
Name: Patrick Foye  
Title: Deputy Chairman~~

~~LONG ISLAND LIGHTING COMPANY~~

~~By: /s/ Dr. William J. Catacosinos  
Name: Dr. William J. Catacosinos  
Title: Chief Executive Officer~~

## **APPENDIX A**

### **Article I. ~~Revised for Application in Contract Years Twelve through Sixteen~~ Per Settlement And Order In National Grid Generation LLC, Docket No. ER09-628**

~~This Appendix provides the manner of setting the Monthly Capacity Charge and the Monthly Variable Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls for each of the first sixteen Contract Years under the Power Supply Agreement ("PSA"). This Appendix assumes that if the Closing Date occurs after January 1 of a calendar year, sixteen Contract Years may occur during the 180 month term of the PSA. Two of the Contract Years will be partial calendar years and the assessment of the then applicable annual revenue requirement through the Monthly Capacity Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls will be prorated accordingly.~~

#### ~~I. Monthly Capacity Charge:~~

~~A. The Monthly Capacity Charge is 1/12th of the annual Capacity Charge. In addition, the Monthly Capacity Charge for the fourth month of each Contract Year after the first Contract Year shall include any true up adjustment due under Sections III and V-B.2 of this Appendix. The Monthly Capacity Charge for any partial months shall be prorated on a daily basis for such month.~~

~~B. The annual Capacity Charge for the first Contract Year is \$291,596,000, reflecting the revenue credit described in Section I-C below. The annual Capacity Charge for the seventh Contract Year is \$305,400,000 and for the twelfth Contract Year is \$422,100,000 (which is being adjusted in Calendar Year 2009 as set forth in Paragraph I below), reflecting the \$7.1 million revenue credit described in Section I-C below. For each Contract Year thereafter (thirteenth through sixteenth), the annual Capacity Charge is equal to the prior year annual Capacity Charge plus the sum of the following adjustments:~~

- ~~(1) Budgeted Incremental Net Utility Plant, times PTROR;~~
- ~~(2) Budgeted Incremental Depreciation Expense;~~
- ~~(3) Labor Cost Index Adjustment (Production);~~
- ~~(4) Labor Cost Index Adjustment (Support);~~
- ~~(5) Benefit Cost Index Adjustment (Production);~~
- ~~(6) Benefit Cost Index Adjustment (Support);~~
- ~~(7) Rebased property tax amount described in Section III-B below; and~~
- ~~(8) Rebased pension and other post employment benefit expenses as described in Section I-H below.~~

~~C. The revenue requirement allocated for collection through the Monthly Capacity Charge will reflect a credit to LIPA equal to \$5,100,000 in the first Contract Year. An additional revenue credit of \$2,020,000 will be applied to the otherwise applicable revenue requirement in the second Contract Year and the total revenue credit of \$7,120,000 shall continue for each of the remaining 14 Contract Years of the initial term of the PSA.~~

~~D. Adjustments that are positive shall be added to the revenue requirement to be collected through the Capacity Charge; adjustments that are negative shall be subtracted from such revenue requirement.~~

~~E. The Annual Capacity Charge assumes a federal income tax rate of 35.00% and a state income tax rate of 8.63%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be automatically incorporated into the formula and the effect of the statutory change will be reflected in the annual Capacity Charge concurrently with the statutory change.~~

~~F. The annual Capacity Charge shall also be adjusted in the thirteenth through sixteenth Contract Years to reflect an increase to the prior year's property tax expense of 4% for each~~

~~Contract Year. The Annual Capacity Charge in Contract Year twelve includes \$176,282,000 of property tax expense.~~

~~G. The level of federal and state income tax expense included in the cost of service for each of the Contract Years twelve through sixteen will reflect a deduction for the cost of removal equal to \$5.744 million. This amount comprises an amount for removal cost spending of \$8.621 million net of an amortization add back amount of \$2.877 million that is reflected in depreciation expense. The net amount of the deduction will be reconciled each Contract Year to the actual removal cost deduction reflected in National Grid Generation's calculation of actual federal and state income tax expense which shall consist of the actual removal cost spending net of the actual amortization add back calculated by National Grid Generation's tax department. The difference will be multiplied by the NGG effective tax rate for the applicable Contract Year (the effective tax rate reflected in the Settlement cost of service is 40.61%) and then divided by (1—the effective NGG tax rate) to convert the change in the removal cost deduction to a change in revenue requirements. The change in revenue requirements will be added to or subtracted from the Plant Additions True-up calculated in Appendix A, Section III C below.~~

~~H. The Pension and Other Post Employment Benefit ("OPEB") expenses included in the cost of service for Contract Year twelve are \$13,642,000 and \$17,638,000, respectively. The amount of OPEB expense includes the current actuarially determined expense of \$11,284,000 plus \$6,354,000, which is the amortization of the Company's OPEB transition obligation. In each of Contract Years thirteen through sixteen the Capacity Charge will be adjusted to reflect the actuarially determined amounts of Pension and OPEB expense for that Contract Year. The Company shall fund its Pension and OPEBs at no less than the actuarial expense level to the extent it can do so on a tax effective basis.~~

~~I. In accordance with the Fifth Amendment to the PSA, which was accepted by the Commission by order dated December 5, 2008 in Docket No. ER09-205 to be effective January 1, 2009, and the Sixth Amendment to the PSA, which was accepted by the Commission by order dated January 6, 2009 to be effective January 15, 2009, GENCO and LIPA have agreed that the Monthly Capacity Charge, the Monthly Variable Charge and True Up adjustments that applied in the Eleventh Contract Year (Calendar Year 2008) will apply on a pro-rata basis in January 2009. The Monthly Capacity Charge, the Monthly Variable Charge and the True Up adjustments for the Twelfth Contract Year (Calendar Year 2009) will apply on a pro-rata basis from February 1, 2009 through December 31, 2009.~~

~~J. Notwithstanding the provisions of Section 8.1 of the PSA, the Depreciation Rates in the Monthly Capacity Charge as described in Section VI below, have been revised for the twelfth Contract Year through the sixteenth Contract Year as set forth in Exhibit 1 to this Appendix.~~

~~K. This Section I is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.~~

## ~~II. Monthly Variable Charge:~~

~~The Monthly Variable Charge for the first sixteen Contract Years is \$0.90 per MWH of net generation of GENCO generating units delivered to LIPA during each month.~~

## ~~III. True up Adjustments:~~

~~A. In the fourth month following the end of each Contract Year an annual lump sum surcharge or credit will be due from or to LIPA, respectively, for the Tax True-up and the Plant Additions True-up. Plant Additions True-Up surcharges or credits will include a carrying charge calculated as described below. With respect to the Tax True-up portion of the surcharge or credit, the surcharges or credits shall include a carrying charge equal to the Base Interest Rate. The carrying charge will be applied on the full amount of the True-up as of July 1 of the Contract Year through~~

~~the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, the Base Interest Rate will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the due date of the lump sum surcharge or credit.~~

~~B. The Tax True-up shall be as described herein: The base year property tax amount will be \$176,282,000 for Contract Year twelve. The base year property tax amount for Contract Years thirteen through sixteen will be the prior year's property tax amount in base rates increased by 4%. The Capacity Charge will be changed each Contract Year to reflect the new base year amount. Any difference between the base year property tax amount and the actual property tax amount recorded on National Grid Generation's books in Contract Years twelve through sixteen will be deferred by National Grid Generation. This deferred amount inclusive of the carrying charge as described herein will be billed to LIPA in the fourth month following the Contract Year being trued-up.~~

~~C. The Plant Additions True-up shall be the sum of:~~

- ~~(1) Actual Incremental Depreciation Expense (including allocated actual incremental depreciation expense on Service Companies' assets) minus Budgeted Incremental Depreciation Expense (including allocated budgeted incremental depreciation expense on Service Companies' assets);~~
- ~~(2) (i) Actual Incremental Net Utility Plant (including allocated actual incremental Service Companies' net utility plant) minus Budgeted Incremental Net Utility Plant (including allocated budgeted incremental Service Companies' net utility plant); times (ii) PTROR as defined in section VI below; and~~
- ~~(3) the amount of any adjustment derived pursuant to Section I-G hereof.~~

~~D. This Section III is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.~~

#### ~~IV. Monthly Capacity Charge For Turbine Upgrades and New Emission Controls~~

~~A. Beginning on the date on which the initial installation of Turbine Upgrades and New Emission Controls begins commercial operation ("Initial COD"), LIPA shall pay a Monthly Capacity Charge For Turbine Upgrades and New Emission Controls that will be equal to 1/12th of the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls for each Contract Year, except in 2010, when such Monthly Capacity Charge shall be equal to 1/9<sup>th</sup> of the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls for 2010 for the period beginning April 2, 2010 through December 31, 2010. The Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year shall be the sum of the following costs attributable to the Turbine Upgrades and New Emission Controls, subject to true-up for actual costs as set forth in Section IV.C below:~~

- ~~(1) Depreciation expense for the Turbine Upgrades and New Emission Controls based on the applicable composite depreciation rate for the related property unit; and~~
- ~~(2) Construction work in progress for the Turbine Upgrades and New Emission Controls will reflect an AFUDC rate of 4.95% through March 31, 2010, and 4.85% thereafter, with all such rates reflecting 100% tax exempt debt financing; and~~
- ~~(3) Net utility plant for the Turbine Upgrades and New Emission Controls will be multiplied by a rate of return of 4.85%, with such rate reflecting 100% tax exempt debt financing;~~

~~and provided that recovery of the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for any Contract Year shall not exceed the Available Fuel and Emissions Savings, which shall be the sum of (a) the Fuel and Emissions Savings attributable to these items during such~~

~~Contract Year, as calculated in accordance with Section VIII (“Annual Fuel and Emissions Savings”); and (b) any Excess Fuel and Emissions Savings which are the cumulative difference between the Annual Fuel and Emissions Savings from previous Contract Years and the Actual Annual Capacity Charges (including Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls) recovered for such Contract Years (“Excess Fuel and Emissions Savings”). To the extent that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year exceeds the Available Fuel and Emission Savings in such Contract Year, the excess shall be deferred for potential recovery, with the same tax exempt rate of return referred to in Section IV.A.2 above, subject to the procedures set forth in Sections IV.D and IV.E below.~~

~~B. — Reserved~~

~~C. — At least 60 days prior to the beginning of each Contract Year, a Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls will be calculated in the manner set forth above based on the budgeted level (using a 13 Month Average) of net utility plant for the Turbine Upgrades and New Emission Controls forecasted to be included in rate base during such Contract Year (sum of Sections IV.A.1 and IV.A.2 above). The Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls shall be trued up for such Contract Year based on actual net utility plant costs (using a 13 Month Average), and the same tax exempt rate of return referred to in Section IV.A.2 above shall be applied to the trued up calculation. If such Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is higher than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true up payment shall be made by LIPA to GENCO within four (4) months after the end of such Contract Year. If the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls is lower than the Projected Annual Capacity Charge for Turbine Upgrades and New Emission Controls, a lump sum true up payment shall be made by GENCO to LIPA within four (4) months after the end of such Contract Year. Any such lump sum true up payment shall include interest at the above referenced tax exempt rate of return from July 1 of the subject Contract Year until the date of payment, except that for 2010, interest shall accrue from the date that is halfway between the Initial COD and December 31.~~

~~D. — Upon expiration of each Contract Year, the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year will be compared to the Available Fuel and Emission Savings. In the event that the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls exceeds the Available Fuel and Emission Savings, GENCO shall refund the difference to LIPA within four (4) months after the end of such Contract Year. Any such refund shall include interest at the above referenced tax exempt rate of return from July 1 of the subject Contract Year until the date of payment, except that for 2010, interest shall accrue from the date that is halfway between the Initial COD and December 31; and such difference in Capacity Charges shall be deferred for potential future recovery in accordance with Sections IV.E and IV.F below.~~

~~In the event that the Available Fuel and Emission Savings exceed the Actual Annual Capacity Charge for Turbine Upgrades and New Emission Controls for such Contract Year, LIPA shall pay the difference, up to the amount of any Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls (defined in Section IV.E below), to GENCO within four (4) months after the end of such Contract Year, and such payment shall reduce the Excess Fuel and Emission Savings to be carried over to future Contract Years as well as the Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls that remain subject to future recovery in accordance with Sections IV.E and IV.F below.~~

~~E. — To the extent that Actual Annual Capacity Charges for Turbine Upgrades and New Emission Controls are not recovered in any Contract Year because they exceed the Available Fuel and Emission Savings for such Contract Year, such unrecovered amount shall be deferred and accumulated, and referred to as “Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls” (which includes interest at the tax exempt rate of return in Section IV.A.2 above).~~

~~F. — In the event that the PSA is not renewed on substantially the same terms and conditions at the expiration of its initial term, and notwithstanding anything herein to the contrary, LIPA shall pay to~~



GENCO, not later than four (4) months after the expiration of the PSA, a lump sum payment equal to the remaining Cumulative Deferred Capacity Charges for Turbine Upgrades and New Emission Controls, but only to the extent of the remaining Excess Fuel and Emission Savings.

~~V. Reopeners:~~

~~— A. ROE~~

~~During the term of the PSA, either party may petition the Commission to revise the return on common equity component of the revenue requirement underlying the Monthly Capacity Charge. During the seventh through eleventh Contract Years, such petition may be filed in the event that the average weekly yield on 10-year U.S. Treasury bonds over any 3 consecutive month period exceeds or falls below the average weekly yield on such bonds for the 3-month period ending December 31, 2003 by more than 200 basis points. The average weekly yield on 10-year U.S. Treasury bonds over the 3-month period ending December 31, 2003 was 4.25%. For purposes of implementing this ROE Reopener, the return on common equity used in the derivation of the Contract Year seven settlement annual revenue requirement shall be assumed to be 9.5%.~~

~~The party making such petition shall seek to change the Monthly Capacity Charge by only the revenue amount required to reflect the changed rate of return including related taxes, as applied to the then applicable rate base. In addition to delineating the change in the Monthly Capacity Charge, the petition shall specify the proposed new rate of return on equity and shall demonstrate that the new rate of return is just and reasonable within the meaning of Section 205 of the Federal Power Act. The party making such request may not propose to change any other component of the revenue requirement used to determine the Monthly Capacity Charge and the Monthly Variable Charge. The other party may oppose the proposed change in Monthly Capacity Charge and provide evidence of mitigating factors that would reduce the amount of the proposed change. The petitioning party may respond to such allegation of mitigating factors, provided that such response does not propose to change the amount of adjustment of the revenue requirement included in the original petition. Unless otherwise agreed by GENCO and LIPA, if the Commission approves a change in the Monthly Capacity Charge, the new base used for determining whether the rate may be reopened again shall be the average weekly yield on 10-year U.S. Treasury bonds over the 3-month period ending in the month before the Commission issues an order approving the change in the Monthly Capacity Charge.~~

~~When the annual Capacity Charge is reset in the twelfth Contract Year in accordance with Section I-C, the average weekly yield on 10-year U.S. Treasury bonds over the 3-month period ending in the month before the new Monthly Capacity Charge becomes effective will be the new base for measuring the 200-basis point change that comprises the precedent condition for determining whether the rate may be reopened thereafter. The new return on equity will be 10.75%.~~

~~— B. A&G~~

~~1. One-Time Allocation Reopener~~

~~Either party may petition the Commission to make the limited rate change described in this paragraph in order to adjust the allocations of Administrative and General and Common (“A&G”) cost components of the revenue requirement underlying the Monthly Capacity Charge. The amount of A&G included in the annual revenue requirement as of the Closing Date is \$45,420,000. After the Closing Date, the personnel of the holding company (“HoldCo”) created by the combination of Long Island Lighting Company and Brooklyn Union Gas Company, and HoldCo’s subsidiaries that perform A&G functions will expand the use of time sheets and perform other direct costing methods to determine the appropriate allocation of their efforts and associated costs. Such data will be provided to LIPA for review and verification. In the twenty-fifth month after the Closing Date, GENCO shall provide LIPA with the results of the time sheet study and the results of any other direct costing methodology agreed upon by GENCO and LIPA,~~

and the parties will undertake to agree upon an appropriate reallocation of A&G costs allocable to LIPA through GENCO. If the parties agree, the agreed-upon reallocation shall be filed with the Commission as a change in rate under Section 205 of the Federal Power Act. If the parties fail to agree by the close of the twenty-eighth month after the Closing Date, then within thirty days, GENCO or LIPA may file its proposed allocation with the Commission under Sections 205 or 206 of the Federal Power Act, respectively. The other party may oppose the reallocation and propose any different allocation. Any Commission order adjusting the revenue requirement to account for a new allocation of A&G costs shall be retroactive to the beginning of the twenty-fifth month after the Closing Date and shall prevail through the end of the sixth Contract Year.

## 2. True-up for New Business Ventures

If HoldCo or its subsidiaries engage in any new business ventures or form new corporate subsidiaries to engage in new business ventures after the Closing Date, HoldCo shall identify on its time sheets, or through other direct costing methods, the amount of A&G costs attributable to such new business ventures during the first twenty-four months after the Closing Date. To the extent that such amounts exceed \$2,000,000 in either of the two consecutive twelve-month periods following the Closing Date, GENCO shall pay LIPA forty-four per cent (44%) of the excess above \$2,000,000 for each such twelve-month period. Such payment shall be made in one lump sum between the beginning of the twenty-fifth month and before the end of the twenty-eighth month following the Closing Date.

## VI. Definitions:

For purposes of this Appendix A, the following capitalized terms shall have the meaning specified below. Terms defined in PSA Article 1 shall have the same meaning in this Appendix as they have elsewhere in the PSA.

A. “Accumulated Deferred Federal and State Income Taxes” means the sum of the plant related operating depreciation deferred tax asset or liability reserves as recorded on GENCO’s and the Service Companies’ books and records under the Federal Energy Regulatory Commission Uniform System of Accounts and Generally Accepted Accounting Principles. The phrase “operating depreciation deferred tax asset or liability reserves” refers to the portion of the deferred federal and state income tax asset or liability reserves associated with 1) the difference between a) the sum of the net tax basis of the transferred plant assets as stepped-up to book value at the Closing Date and the net tax basis of new additions and b) the net book basis of GENCO’s and the Service Companies’ plant assets, times 2) the statutory federal and state income tax rate.

B. “Approved Net Plant Additions” means aggregate capital additions approved under Article 9 and placed in service, plus capital additions not included in an approved Capital Improvement Budget at the beginning of a Contract Year but later approved by LIPA (but not including cost overruns on items included in a budget approved by LIPA), minus aggregate scheduled retirements.

C. “Actual Incremental Depreciation Expense” means the sum of the 12 monthly calculations of actual Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.

D. “Actual Incremental Net Utility Plant” means the sum of 1) the 13 Month Average of actual Approved Net Plant Additions, minus 2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, and plus 3) the 13 Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.

E. “Attrition Factor” means, for the purpose of computing the Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for the Contract Years eight through eleven, the following amounts for the appropriate Contract Years:



<u>Contract Year</u>	<u>Attrition Factor</u>
Eight	(1-.01)
Nine	(1-.02)
Ten	(1-.03)
Eleven	(1-.04)

~~Any Attrition Factor applicable to Contract Years after Contract Year twelve shall be determined under Articles 8 and 9 of the PSA.~~

~~F. “Budgeted Incremental Depreciation Expense” means the sum of the 12 monthly calculations for the Contract Year of scheduled monthly Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.~~

~~G. “Budgeted Incremental Net Utility Plant” means 1) the 13 Month Average of Approved Net Plant Additions, minus 2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, plus 3) the 13 Month Average of the difference between the ending and beginning Accumulated Deferred Federal and State Income Taxes.~~

~~H. “Composite Depreciation Rate” means the annual rate to be applied to gross plant to determine annual depreciation expense. The appropriate rate for each item of steam production plant, other production plant, common plant and electric general plant is set forth on the attached Exhibit 1.~~

~~I. “Defined Labor and Benefits Index” means, for the Contract Years 1999–2000, 3.5% per year, the effective percentage wage increase provided in LHCO’s collective bargaining agreement dated February 14, 1996. The Defined Labor and Benefits Index used in the adjustment for the second Contract Year shall be the appropriate index multiplied by a fraction equal to (the number of days from the Closing Date through December 31 divided by 365). For each Contract Year after Contract Year 2000 through the eleventh Contract Year, the Defined Labor and Benefits Index shall be the percentage change for the twelve month period ending on the preceding September 30 for the Employment Cost Index for Wages and Salaries Only, Private Industry Workers, Northeast, Not Seasonally Adjusted, as published by the United States Bureau of Labor Statistics. The Defined Labor and Benefits Index for Contract Years after Contract Year twelve shall be the percentage change for the twelve month period ending on the preceding September 30 for the Employment Cost Index for wages and salaries, Private Industry, not seasonally adjusted for the Northeast (Service No. CIU20200000002101) as published by the United States Bureau of Labor Statistics.~~

~~J. “Incremental Synergy Savings” means, with the exceptions noted below, the sum of the twelve monthly amounts set forth in the table below for the applicable Contract Months for each Contract Year. For purposes of this definition, the term “Contract Month” shall mean the number of the month, from 1 to 127, in consecutive order starting with the month in which the Closing Date occurs.~~

<u>12 Month Period</u>	<u>Monthly Amount (\$ in 000’s)</u>
1-12	0
13-24	564
25-36	292
37-48	293
49-60	287
61-72	279
73-84	137
85-91	92

If GENCO and LIPA agree during the establishment of the annual Capacity Charge for the seventh Contract year, that the total revenue requirements to be recovered during that Contract Year reflects all or a portion of the Incremental Synergy Savings for that or subsequent Contract Years set forth above, the Incremental Synergy Savings to be applied under the Appendix A will be reduced accordingly.

Beginning with Contract Month 128 there is to be no synergy savings adjustment reflected in the Capacity Charge. The achieved synergy savings of The Brooklyn Union Gas Company/Long Island Lighting Company merger are fully reflected in the operating costs for Contract Year twelve. The synergy savings, net of costs to achieve, of the merger with National Grid US in August, 2007 were provided separately to LIPA under the Agreement and Waiver dated as of March 22, 2007 and the Fourth Amendment to the PSA.

K. “Labor Cost Index Adjustment (Production)” and “Benefit Cost Index Adjustment (Production)” for the Contract Years eight through eleven means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of (the Defined Labor Index times the Attrition Factor) times the prior Contract Year base labor and benefit costs. The base year labor costs (production) for the seventh Contract Year will be \$41.944 million and the base year benefit costs (production) for the seventh Contract Year will be \$5.800 million. The sum of the prior Contract Year base labor costs (production) and benefit costs (production) and the Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment. The Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for Contract Years thirteen through sixteen means the sum of (1) the base labor and benefits costs for the prior Contract Year, and (2) the product of the Defined Labor and Benefits Index times the prior Contract Year’s base labor and benefit costs. The base year labor costs (Production) for the twelfth Contract Year will be \$ 49,893,000 and the base year benefit costs (Production) for the twelfth Contract Year will be \$16,966,000. The sum of the prior Contract Year base labor and benefits costs (production) and the Labor Cost Index Adjustment (production) and Benefit Cost (production) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment.

L. “Labor Cost Index Adjustment (Support)” and “Benefit Cost Index Adjustment (Support)” for the Contract Years eight through eleven means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (support) for the seventh Contract Year will be \$17.278 million and the base year benefit costs (support) for the seventh Contract Year will be \$5.572 million. The sum of the prior Contract Year base labor costs (support) and benefit costs (support) and the Labor Cost Index Adjustment (Support) and Benefit Cost Index Adjustment (Support) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment. The Labor Cost Index Adjustment (Support) and Benefits Cost Index Adjustment (Support) for Contract Years thirteen through sixteen means the sum of (1) the base labor and benefits costs for the prior Contract year, and (2) the product of (the Defined Labor and Benefits Index times the prior Contract Year’s base labor and benefits costs. The base year labor costs (Support) for the twelfth Contract Year will be \$ 8,541,000 and the base year benefits costs (Support) for the twelfth Contract Year will be \$3,146,000. The sum of the prior Contract Year base labor and benefits costs (support) and the Labor Cost Index Adjustment (support) and Benefit Cost Index Adjustment (support) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment.

M. “PTROR” means pre-tax return on rate base which shall be 9.8% for each of Contract Years seven through eleven and 11.83% for Contract Years twelve through sixteen. PTROR assumes a federal income tax rate of 35 percent and a state income tax rate of 8.63%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be

automatically incorporated into the formula and the effect of the statutory change will be reflected into the PTROR concurrently with the statutory change.

N. “13 Month Average” means a monthly average developed by 1) taking the sum of a) the first through eleventh monthly amounts to be averaged, b) one half of the twelfth monthly amount to be averaged, and c) one half of the prior year’s twelfth monthly amount to be averaged and 2) dividing the sum in 1) by 12.

O. “Service Companies” means National Grid Generation’s affiliates that provide services to National Grid Generation.

## ~~VII. — Ramp Down Adjustment:~~

Nothing herein shall be construed to predetermine the amount to be paid by LIPA to GENCO under Section 11.1 of the PSA if LIPA exercises its ramp down option. In addition, the Monthly Capacity Charge for the remaining capacity shall be adjusted as a result of the ramp down.

## ~~VIII. — Methodology for Calculating Annual Fuel and Emission Savings~~

The following methodology shall be used to calculate the Annual Fuel and Emissions Savings associated with the Turbine Upgrades and New Emission Controls for purposes of Section IV above.

A. — Fuel Savings. In the three month period preceding the Turbine Upgrade outage, a turbine test will be conducted to determine the turbine efficiency for the unit. Within three (3) months after completion of the Turbine Upgrade, a turbine test will be conducted in accordance with KeySpan’s existing turbine test procedures entitled, “Modified Turbine Test Procedure for Fossil Fueled Steam Generating Units” (current rev. June 4, 1999), to determine the as modified turbine efficiency. LIPA and its consultants shall have the right to review all test procedures, witness all tests and review and approve all calculations associated with the baseline and as modified tests, all such approvals not to be unreasonably withheld.

The percentage improvement in turbine efficiency will be multiplied by the overall unit heat rate to determine the BTU/KWh savings attributable to the Turbine Upgrades (e.g., 3% x 10,000 BTU/KWh = 300 BTU/KWh). At the end of each calendar year, the total number of MWh (megawatt hours) generated by the unit will be multiplied by the BTU/MWh savings calculated from the turbine efficiency testing described above to determine the total BTU savings for the year. The total BTUs saved as a result of the Turbine Upgrades will be multiplied by such year’s average fuel cost (\$/10<sup>6</sup> BTU) for the unit to determine the annual fuel cost savings.

$$\text{Fuel cost savings} = \text{Total BTU savings} \times \text{Avg Fuel Cost } (\$/10^6 \text{ BTU})$$

B. — Emissions Savings — Turbine Upgrades. In order to determine the emissions avoided and emission credits saved as a result of the Turbine Upgrades, the achieved efficiency improvement following the installation of Turbine Upgrades on each Northport unit in BTUs/MWh (as calculated in accordance with Section A) shall be multiplied by the number of MWh produced for the calendar year at such unit and then multiplied by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission rate (in lbs/mmBTU) at such unit as determined by certified Continuous Emissions Monitoring Systems (“CEMs”) records divided by 2000 (lbs/ton).

The value of such NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> Emission Savings shall be determined by multiplying the annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission savings in tons from all Northport units modified with Turbine Upgrades by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission credit price for all applicable NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission price for such programs shall be as reported in “Air Daily” or other similar trade publication as mutually agreed by the parties.

~~C. Emissions Savings—New Emissions Controls. In order to determine the effectiveness of, and the emission credit savings attributable to the New Emissions Controls, the NO<sub>x</sub> emission rate in lbs/MWh shall be measured using the plant's certified CEMs before and after the application of the NO<sub>x</sub> control technology on each unit. Such measurements shall be made on both natural gas fuel and fuel oil at the identical steady load over a three-hour period, pursuant to the then in effect Environmental Protection Agency regulations. LIPA and its consultants shall have the right to review all test procedures, witness all tests and confirm all calculations associated with the baseline and as modified tests. The difference in NO<sub>x</sub> emission rate in lbs/MWh for each fuel at each unit shall be established as the achieved emission rate reduction for each unit and each fuel. The total tons of NO<sub>x</sub> emission avoided and the corresponding emission credits saved each year following the application of NO<sub>x</sub> emission control technology on each unit shall be calculated as follows at the end of each calendar year:~~

~~Achieved emission rate reduction on gas (lbs/MWh) times the number of MWh produced on gas plus the achieved emission rate reduction on oil times the number of MWh produced on oil divided by 2000 (lbs/ton).~~

~~The value of such NO<sub>x</sub> emission savings shall be determined by multiplying the annual NO<sub>x</sub> emission savings in (tons) from all units modified by New Emission Controls by the average annual NO<sub>x</sub> emission credit price for all applicable NO<sub>x</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed upon by the parties.~~

~~D. Annual Fuel and Emission Savings. Annual Fuel and Emission Savings will be calculated as follows:~~

~~Sum of the savings from (A) Fuel Savings, (B) Emission Savings—Turbine Upgrades and (C) Emission Savings—New Emission Controls:~~

$$\text{Annual Fuel and Emission Savings} = A + B + C$$

#### ~~IX. Excess Emissions Credits~~

~~To the extent that Emissions Credits saved as a result of the Turbine Upgrades and New Emission Controls are not required to satisfy the compliance obligations of the Northport Unit Nos. 1-4 and Port Jefferson Unit Nos. 3 and 4, such Emissions Credits shall be pooled with those attributable to GENCO's other generating stations under the PSA (for the term of the PSA) and such pooled credits shall be applied pro-rata to all such generating stations to meet their compliance obligations under applicable law. All Emissions Credits created in any year as a result of the Turbine Upgrades and New Emission Controls that are used to offset the Annual Capacity Charge and are not used to satisfy GENCO's compliance obligations under applicable law shall be deemed attributable to the Emission Credits savings derived from the Turbine Upgrades and New Emission Controls. If such Emissions Credits are sold, LIPA will receive 100 percent of the net proceeds. Alternatively, LIPA may use such Emissions Credits in its sole discretion. All other Emissions Credits shall be split in accordance with the sharing provisions in Section 17 of Schedule F to the Merger Agreement and Section 8.1.6 of the PSA.~~

## DEPRECIATION RATES

## STEAM PRODUCTION PLANT

Account Number	Description	Depreciation Rate (%)
311	Structures & Improvements	3.16
312	Boiler Plant Equipment	3.70
314	Turbogenerator Units	2.75
315	Accessory Electric Equipment	1.57
316	Misc. Power Plant Equipment	4.03
	Total Steam Production Plant	3.34

## OTHER PRODUCTION PLANT

Account Number	Description	Depreciation Rate (%)
341.0	Structures & Improvements	3.38
342	Fuel Holders, Producers & Access	3.78
344.0	Generators	3.05
345.0	Accessory Electric Equipment	2.94
346.0	Misc. Power Plant Equipment	2.31
	Total Other Production Plant	3.10

## COMMON PLANT CATEGORIES

Account Number	Description	Depreciation Rate (%)
303.1	<u>Miscellaneous Intangibles:</u>	
	Capitalized Software:	
	Group 1 – 5 year amortization	20.00
	Group 2 – 7 year amortization	14.28
	Group 3 – 10 year amortization	10.00
	<u>Office Building:</u>	
390.0	Structures and Improvements	2.54
	<u>General:</u>	
391.0	Office Furniture and Equipment	4.39
395.0	Laboratory equipment	2.88
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	3.91
		4.86
	<u>Data Processing:</u>	

391.0	Sub-accounts .2 .8	11.44
	<u>Transportation:</u>	
392.0		8.01
	<u>Stores Equipment:</u>	
393.0		3.79
	<u>General Shops:</u>	
394.0	Tools, shop, and garage equipment	3.40
	<u>Power Operated Equipment:</u>	
396.0		7.87

### **ELECTRIC GENERAL PLANT**

390.0	Structures and Improvements	2.42
391.0	Office Furniture and Equipment	11.34
392.0	Transportation Equipment	7.92
393.0	Stores Equipment—Operating Stores	3.80
394.0	Tools, Shop and Garage Equipment	3.15
395.0	Laboratory Equipment	2.71
396.0	Power Operated Equipment	7.90
397.0	Communication Equipment	5.99
398.0	Miscellaneous Equipment	3.79
	Total Electric General Plant	5.03

### **APPENDIX B**

The following charges are applicable from the Closing Date through the end of Contract Year Six. The Monthly Variable Adjustment Charge for Contract Year Seven will be \$0. The sum of the Monthly Variable Adjustment Charges for Contract Year eight will be the lesser of \$2 million and the amount calculated according to Section 8.1.5 of the Power Supply Agreement. The following Monthly Variable Adjustment Charges are applicable for Contract Years Nine through Eleven and in January of Contract Year Twelve.

**TABLE 1—Start-Up Charges for Steam Units**

Class	Charge Per Start	Annual Threshold
Northport Plant	\$20,741	38
Barrett and Port Jefferson Plants	\$6,136	52
Glenwood 3 & 4 Far Rockaway 4	\$3,751	47

**TABLE 2 Charges for Base Load Hours of Operation for Internal Combustion Units-1,2**

Class	Charge Per MWH	Annual Threshold (MWHG)
Holtsville 1-10 Jets	\$5.18	37,228
Barrett 9-12 Jets	\$6.73	26,399

East Hampton, Shoreham 2 Jets	\$7.02	2,864
Montauk, East Hampton Diesels	\$9.79	907
Barrett 1-8 Frame 5's	\$7.90	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southhold Frame 5's	\$7.90	1,334
Glenwood 2 & 3, West Babylon Frame Ts	\$3.97	5,723
Shoreham 1 Frame 1EA	\$5.94	823
Wading River 1-3 Frame 7 EA's	\$3.87	44,664

<sup>1</sup>Total MWH generation for all units in each class is used as a proxy for hours of operation.

<sup>2</sup>These MWHG may be revised by mutual agreement if required due to environmental compliance.

**TABLE 3——Charges for MWH Production at Peak Load<sup>1</sup>**

Class	Charge Per MWH
Holtsville 1-10 Jets	\$15.54
Barrett 9-12 Jets	\$20.19
East Hampton, Shoreham 2 Jets	\$21.06
Montauk, East Hampton Diesels	N/A
Barrett 1-8 Frame 5's	\$23.70
Glenwood 1, Port Jefferson, Northport, Southampton and Southhold Frame 5's	\$23.79
Glenwood 2 & 3, West Babylon Frame Ts	\$11.91
Shoreham 1 Frame 7EA	\$17.82
Wading River 1-3 Frame 7 EA's	\$11.61

**TABLE 4——Charges for Fuel Swaps**

Individual Units	Fuel Swaps Per Day	Fuel Swaps Per Year	Cost Per Swap
Northport Unit	1	1-25	No Charge
Northport Unit	2-4	26-100	\$242
Northport Unit	>4	>100	\$3,000
185 MW Unit	1-2	1-33	No Charge
185 MW Unit	3-4	34-140	\$81
185 MW Unit	>4	>140	\$1,000

<sup>†</sup>MWH for peak hours of operation are to be determined from actual peak load generation in accordance with manufacturers' design curves.

The following Monthly Variable Adjustment Charges are applicable for Contract Years Twelve (beginning February 1, 2009 and ending December 31, 2009) through Sixteen:

**Table 1A—Start-Up Charges for Steam Units**

Class	Charge Per Start	Annual Threshold
Northport Plant	\$29,250	38
Barrett and Port Jefferson Plants	\$12,500	52
Glenwood 3 & 4 Far Rockaway 4	\$6,250	36

**TABLE 2A—Charges for Base Load Hours of Operation for Internal Combustion Units**

Class	Charge Per MWH	Annual Threshold (MWHG)
Holtsville 1-10 Jets	\$6.71	37,228
Barrett 9-12 Jets	\$8.69	26,399
East Hampton, Shoreham 2 Jets	\$10.43	2,864
Montauk, East Hampton Diesels	\$9.79	907
Barrett 1-8 Frame 5's	\$16.43	6,636
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$16.43	1,334
Glenwood 2&3, West Babylon Frame 7A's	\$6.10	5,723
Shoreham 1 Frame 7A	\$11.06	823
Wading River 1-3 Frame 7EA's	\$3.87	44,664

**TABLE 3A—Charges for MWH Production at Peak Load**

Class	Charge Per MWH
Holtsville 1-10 Jets	\$20.13
Barrett 9-12 Jets	\$26.07
East Hampton, Shoreham 2 Jets	\$31.29
Montauk, East Hampton Diesels	N/A
Barrett 1-8 Frame 5's	\$49.29
Glenwood 1, Port Jefferson, Northport, Southampton and Southold frame 5's	\$49.29
Glenwood 2&3, West Babylon Frame 7A's	\$18.30
Shoreham 1 Frame 7A	\$33.18
Wading River 1-3 Frame 7EA's	\$11.61

**TABLE 4A—Charges for Fuel Swaps**

Individual Units	Fuel Swaps Per Day	Fuel Swaps Per Year	Cost Per Swap
Northport Unit	1	1-25	No Charge
Northport Unit	2-4	26-100	\$325



Northport Unit	≥4	≥100	\$4,025
185 MW Unit	1-2	1-33	No Charge
185 MW Unit	3-4	34-140	\$110
185 MW Unit	≥4	≥140	\$1,040

**PROCEDURE FOR DETERMINATION OF MONTHLY  
VARIABLE PAYMENT ADJUSTMENT CHARGE**

1. ~~After the end of each calendar month, GENCO will submit a report to LIPA which contains the actual number of starts for steam units; hours of operation, MWh energy production, peak hours and MWh for internal combustion units; and number of fuel swaps for each class of generating unit identified in this Appendix B for the preceding calendar month and cumulative for the Contract Year through the preceding calendar month.~~
2. ~~On each monthly report, GENCO will compare the cumulative number of starts per class, MWh of energy production by class or number of fuel swaps by unit to the corresponding thresholds presented in this Appendix B.~~
3. ~~All thresholds except daily fuel swap thresholds are annual thresholds. Cumulative actual values used to compare to threshold values will reset to zero annually.~~
4. ~~If cumulative actual values for number of starts by class, MWh energy production by class, or number of fuel swaps by unit is less than or equal to the threshold, no charge will apply for that preceding month.~~
5. ~~In the first month in which cumulative actual values for number of starts, MWh energy production or number of fuel swaps exceeds the threshold, then GENCO will compute the difference between the cumulative actual value and threshold value, then multiply the difference by the charges presented in the corresponding table in this Appendix B.~~
6. ~~For each month subsequent to the first month in a given calendar year when a particular threshold has been exceeded, GENCO shall, to the extent that a particular threshold for a particular unit or class has been exceeded, multiply the actual number of starts, MWh energy production or number of fuel swaps in that month by the charges set forth in the corresponding table in this Appendix B.~~
7. ~~For internal combustion units, all MWh energy production at peak load will be multiplied by peak load charges as presented in Appendix B without regard to a threshold. Peak load MWh will be calculated by integrating the unit MWh for the actual time period that a unit is in peak operating mode, as required by the System Operator.~~
8. ~~The actual number of starts shall not include any unit restarts following a forced outage caused by a fuel swap.~~
9. ~~Fuel swap thresholds per unit have been established on a daily and annual basis. The number of fuel swaps used to determine if the annual threshold has been exceeded shall be reduced by any fuel swaps exceeding the daily thresholds.~~
10. ~~These charges will be invoiced to LIPA monthly in accordance with Section 8.5 of the agreement.~~

### **APPENDIX C—Generating UNITS**

This Appendix will be developed and agreed upon promptly after the date hereof and, in any event, prior to the Closing Date.

<del>Unit Name</del>	<del>Name Plate Rating(MW)</del>
<del>Steam Units</del>	
<del>Northport 1</del>	<del>375</del>
<del>Northport 2</del>	<del>375</del>
<del>Northport 3</del>	<del>375</del>
<del>Northport 4</del>	<del>375</del>
<del>Port Jefferson 3</del>	<del>175</del>
<del>Port Jefferson 4</del>	<del>175</del>
<del>Glenwood 4</del>	<del>100</del>
<del>Glenwood 5</del>	<del>100</del>
<del>E.F. Barrett 1</del>	<del>175</del>
<del>E.F. Barrett 2</del>	<del>175</del>
<del>Far Rockaway 4</del>	<del>100</del>

<del>Name Plate</del>	<del>Unit Name Rating(MW)</del>
<del>Internal Combustion Units</del>	
<del>E.F. Barrett 1-8</del>	<del>144</del>
<del>E.F. Barrett 9-12</del>	<del>167</del>
<del>Holtsville 1-10</del>	<del>567</del>
<del>Wading River 1-3</del>	<del>239</del>
<del>Shoreham 1</del>	<del>53</del>
<del>Shoreham 2</del>	<del>19</del>
<del>Glenwood 1</del>	<del>16</del>
<del>Glenwood 2-3</del>	<del>110</del>
<del>East Hampton 1</del>	<del>6</del>
<del>East Hampton 2-4</del>	<del>2</del>
<del>Northport G 1</del>	<del>16</del>
<del>Port Jefferson G 1</del>	<del>16</del>
<del>W. Babylon 4</del>	<del>52</del>
<del>Southold 1</del>	<del>14</del>
<del>So. Hampton 1</del>	<del>12</del>
<del>Montauk 2-4</del>	<del>6</del>

## **APPENDIX D – DELIVERY POINTS**

~~This Appendix will contain all the interconnections points between each generating unit and the T&D System. These will be the same points as identified in Appendix 2 to the Management Service Agreement.~~

**APPENDIX E**

**MINIMUM LOADINGS, RAMP RATES,  
START-UP & SCHEDULED SHUTDOWN TIME**

**Table 1 Minimum Loadings**

<b>Unit</b>	<b>Minimum Loadings</b>
Northport	100 MWN
Port Jefferson	40 MWN
E. F. Barrett	40 MWN
Glenwood	20 MWN
Far Rockaway	20 MWN

**Table 2 Ramp Rate**

<b>Unit</b>	<b>Ramp Rates</b>
Northport	4 MW/Minute
Port Jefferson	4 MW/Minute
E. F. Barrett	2 MW/Minute
Glenwood	1 MW/Minute
Far Rockaway	1 MW/Minute

**Table 3 Start-Up Times**

<b>Unit</b>	<b>Cold&gt;90 hours</b>	<b>Warm</b>	<b>Hot&lt;24 Hours</b>
Northport	30 hours	12 hours	8 hours
Port Jefferson	24 hours	12 hours	8 hours
E. F. Barrett	24 hours	12 hours	8 hours
Glenwood	24 hours	12 hours	4 hours
Far Rockaway	24 hours	12 hours	4 hours

**Table 4 Minimum Scheduled Shut Down**

<b>Units</b>	<b>Minimum Shut Down</b>
Northport	72 Hours
Port Jefferson	48 Hours
E. F. Barrett	48 Hours
Glenwood	48 Hours
Far Rockaway	48 Hours

**Table 5 Internal Combustion Loading<sup>†</sup>**

<b>Unit</b>	<b>Base Load MW</b>	<b>Peak Load MW</b>
Holtsville 1-5 (CI eng.)	48.0	53.0
Holtsville 6-10 (CID eng.)	45.6	54.9
Wading River 1-3	74.0	81.0
Southhold	12.6	14.5
Port Jefferson	13.9	15.7
East Hampton G.T.	17.0	19.6
East Hampton Diesels 2,3,4	2.0	2.0
Montauk Diesels 2,3,4	2.0	2.0
Southampton	10.1	11.6
Shoreham 1	41.3	46.5
Shoreham 2	14.0	17.9
E. F. Barrett 1-8	14.7	16.5
E. F. Barrett 9-12	36.0	39.2
Glenwood 1	13.9	15.7
Glenwood 2,3	43.7	50.9
West Babylon	41.3	46.5
Northport	13.9	15.7

<sup>†</sup> Ratings listed above are based on operation at an ambient temperature of 80°F. Actual loading limits will be determined by adjusting the values listed above to actual ambient temperature using manufacturers' temperature vs. Load curves.

## APPENDIX F

### PERFORMANCE INCENTIVES/DISINCENTIVES

#### I. DMNC Incentive/Disincentives

~~GENCO will use its best efforts to maintain its generating units such that during the six month Summer Operating Period (May through October) the total dependable maximum net capability ("Annual DMNC") as defined by the New York Power Pool (NYPP) Methods & Procedures—2 (MP-2), meets or exceeds the predetermined level ("Target DMNC"). GENCO shall determine the Annual DMNC each year in accordance with the New York Power Pool Methods and Procedures—2 ("MP-2"). The MP-2 test will be conducted once between June 1 through September 15 for each unit. LIPA shall have the right to witness such tests and/or review the test data and results. If the MP-2 is revised by the NYPP, the Parties agree to revise or replace this incentive/disincentive mechanism in a manner that reflects the intended purpose.~~

~~The Annual DMNC and the Target DMNC ratings shall be considered only for the total system (the sum of all steam and internal combustion generating units under contract to LIPA).~~

~~The Target DMNC shall be computed as the simple average of the Annual DMNC values (as adjusted for the average temperature for the last five year period prior to the Closing Date) for the last five year period prior to the Closing Date. The Target DMNC is based upon all of the existing GENCO steam and internal combustion units in service. The Target DMNC shall remain fixed unless (a) LIPA exercises its option to ramp down its GENCO capacity purchases, or (b) any GENCO unit is mothballed, retired, significantly derated, incurs a long term outage, or is otherwise removed from service in whole, or in part, or (c) any capital improvement approved by LIPA that materially increases the DMNC of the Generating Facilities. Under these conditions, the Target DMNC shall be equitably adjusted based on the generating unit data for the original computation period with appropriate adjustments for the new conditions, except that for a significant derating, removal from service or long term outage the reduction in the DMNC target will apply only to the extent that these events were not attributable to GENCO's failure to follow Prudent Utility Practice.~~

~~Should the Annual DMNC be in excess of the Target DMNC, LIPA shall make a payment to GENCO equal to \$15,000 per MW above that Target DMNC. Should the Annual DMNC be less than 99% of the Target DMNC, GENCO shall make a payment to LIPA equal to \$15,000 for each MW deficiency below 99% of the Target DMNC. There shall not be any incentives or disincentives payments for a year in which the Annual DMNC is between 99% and 100% of the Target DMNC. The maximum incentive/disincentives will be \$500,000 annually.~~

~~In the event that LIPA does not approve amounts for operating and maintenance expenses and capital expenditure, that provide GENCO with the same opportunity to maintain the DMNC target levels as GENCO has at the execution of this Agreement, such target levels shall be equitably adjusted.~~

~~Any DMNC incentive/disincentive payments will be determined after October 31, the end of the Summer Operating Period for each year and will be reflected in the first monthly invoice following the end of such Summer Operating Period.~~

#### II. Availability Incentive/Disincentive

~~GENCO will use its best efforts to maintain its generating units such that during the three month summer peak period (June through August) the availability of its steam and internal combustion units meets or exceeds the predetermined level ("Target Availability") as measured by the North American Electric~~

~~Reliability Corporation (NERC) – Generating Availability Data System (GADS) Availability Factor formula set forth as follows:~~

$$AF = \frac{AH}{PH}$$

~~where:~~

~~AH = Available Hours are the sum of in-service hours and reserve shutdown hours in the period. In-service hours are defined as those hours where the unit is in service and electrically connected to the system. Reserve shutdown hours are those hours whenever the unit is available to generate but is not electrically connected due to a lack of demand or the availability of lower cost power.~~

~~PH = Period Hours are the total number of hours in the period.~~

~~Unit availability is tracked and calculated by GENCO for submittal to NERC. All data collection, reporting and calculations are defined in the GADS Data Reporting Instructions.~~

~~The average generation availability for the GENCO system (for the June through August period) shall be calculated annually (“Availability”) as a weighted total of each unit’s availability. The weighting is based on the Net Dependable Capacity (NDC), as submitted to NERC.~~

~~The Availability Target for each summer period (June through August) shall be 97.5 percent of the simple average of the annual Availability values for the last five year period prior to the Closing Date.~~

~~5 Year Average Availability = 96.5 percent (to be revised to reflect last five year period prior to the Closing Date)~~

~~Target Availability = 97.5 percent of 5 Year Average Availability (to be revised to reflect last five year period prior to the Closing Date)~~

$$.975 * 96.5\% = 94.1\% \text{ (Target Availability)}$$

~~As noted, the above target is based upon all of the existing GENCO steam and internal combustion units in service. The Target Availability shall remain fixed unless (a) LIPA exercises its option to Ramp Down GENCO's Generating Facilities, or (b) any of GENCO's Generating Facilities is mothballed, retired, significantly derated, removed from service, or incurs a long term outage for unforeseen reasons. In the event any changes are required the Target Availability will be adjusted appropriately.~~

~~For each year the Availability shall be compared with the Target Availability to determine the amount of incentive or disincentive. Should the Availability exceed the Target Availability by 0.5 percent, LIPA shall provide an incentive payment to GENCO of \$100,000. Such incentive payment shall increase by \$100,000 for each 0.1 percent increase in the Availability. Should the Availability be less than the Target Availability by 0.5 percent, GENCO will incur a disincentive of \$100,000. Such disincentive shall increase by \$100,000 for each 0.1 percent decrease in the Availability. The maximum incentive/disincentive shall be \$2 million annually.~~

~~In the event that LIPA does not approve amounts for operating and maintenance expenses and capital expenditure, that provide GENCO with the same opportunity to maintain the Availability levels as GENCO has at the execution of this Agreement, such target levels shall be equitably adjusted.~~

~~Any Availability incentive/disincentive payments will be determined after August 30 for each year and will be reflected in the first monthly invoice following August 30.~~

### III. ~~Property Tax Incentive~~

~~This incentive shall be as described in this Agreement in Section 21.16 Property Taxes.~~

### IV. ~~Heat Rate Incentive/Disincentive~~

~~GENCO will use its best efforts to maintain the efficiency of its generating units in order to reduce the fuel consumption for production of electric energy for LIPA. As described herein, an incentive or disincentive will be determined monthly based on a comparison of the measured efficiency of the individual Steam Units at the Northport, Barrett, Glenwood, Port Jefferson, and Far Rockaway power stations to a predetermined BTU Curve Standard for each Class of Steam Unit (“Class of Unit”). There will be four Classes of Units:~~

- ~~1. Northport Unit No 1—4~~
- ~~2. E.F. Barrett Unit No 1 & 2 and Port Jefferson Unit No 3 & 4~~
- ~~3. Glenwood Unit No 4 & 5~~
- ~~4. Far Rockaway Unit No 4~~

~~The BTU Curve Standard for each Class of Units is based upon a functional relationship between hourly net generation (MWhN) and hourly fuel burned for each Class of Unit, expressed in terms of millions of British thermal units (“MMBtu”), considering (i) the relationship between hourly net MWhN generated by a unit in a given Class of Units, and the average efficiency of all units in this given Class of Units when burning natural gas and; (ii) adjustments for Seasonal Factors. This relationship (the Unit Target Fuel Burn Curve or Btu Curve) is expressed for each Class of Units by the following equation:~~

$$\text{Hourly Target Fuel Burn} = (A + B * MW + C * MW^2) * \text{DOF} * \text{Seasonal Factor}$$

~~Where the parameters are as follows:~~

- ~~▪ Base coefficients = A, B and C~~
- ~~▪ Dispatch Operating Factors = DOF~~
- ~~▪ MW = Actual Generation for Target Hour~~
- ~~▪ Seasonal Factor — Adjustments to compensate for uncontrollable variable: sea water temperature~~

<del>Oil → Gas</del>	<del>1.04</del>
<del>Deadband</del>	<del>1.00%</del>

<del>Unit Class</del>	<del>Base Coefficients</del>			<del>Base-Target</del>	<del>Min-Disp. MW</del>	<del>DTH/Start</del>
	<del>A</del>	<del>B</del>	<del>C</del>	<del>DOFs</del>		
<del>NPT</del>	<del>309.710</del>	<del>8.64301</del>	<del>0.001650</del>	<del>1.0250</del>	<del>20</del>	<del>3000</del>
<del>PJ/EFB</del>	<del>184.015</del>	<del>8.68568</del>	<del>0.004700</del>	<del>1.0130</del>	<del>10</del>	<del>1500</del>
<del>GLD</del>	<del>148.431</del>	<del>8.35320</del>	<del>0.013220</del>	<del>1.0300</del>	<del>5</del>	<del>1250</del>
<del>FR</del>	<del>111.543</del>	<del>8.34362</del>	<del>0.014020</del>	<del>1.0200</del>	<del>5</del>	<del>1000</del>

<del>Seasonal Factors (to multiply Base Target by to get Target)</del>					
<del>Jan</del>	<del>Feb</del>	<del>Mar</del>	<del>Apr</del>	<del>May</del>	<del>Jun</del>
<del>0.995</del>	<del>0.995</del>	<del>0.995</del>	<del>0.995</del>	<del>1.000</del>	<del>1.000</del>
<del>Jul</del>	<del>Aug</del>	<del>Sep</del>	<del>Oct</del>	<del>Nov</del>	<del>Dec</del>
<del>1.005</del>	<del>1.010</del>	<del>1.010</del>	<del>1.005</del>	<del>1.000</del>	<del>0.995</del>

~~The Btu Curve Standard for each Class of Units represents the average amount of fuel required to generate a given amount of electricity (the “Target Btu”) from GENCO’s steam generating units within their respective Class of Units adjusted for seasonal factors and target start up fuel burns.~~



~~The Btu Curve for each unit in a Class of Units will be the same. Should significant modifications be made to a Unit, resulting in a reduction in the heat rate of 2% or more, a new Hourly Unit Target Fuel Burn curve will be established for that unit, effectively creating a new Class of Units. An example of such a change is the “Dense Pack” project at Northport.~~

~~A minimum participation threshold has been established for each steam generating site (“Site”). Should the monthly generation for a particular Site be less than the threshold amount for that Site, the Site will not be included in that month’s incentive/disincentive calculation. The minimum participation thresholds are as follows:~~

<b>Monthly Site Min Gen MWH</b>	
<b>NPT</b>	<b>75,000</b>
<b>PJ</b>	<b>25,000</b>
<b>EFB</b>	<b>25,000</b>
<b>GLD</b>	<b>15,000</b>
<b>FR</b>	<b>10,000</b>

~~Each month the Hourly Target Fuel Burns will be determined for each unit based on the BTU Curve of Hourly Target Fuel Burn vs. Hourly Unit Generation for that Class of Unit adjusted for Seasonal Factors. The Monthly Target Fuel Burn for GENCO will be the sum of each participating unit’s Hourly Target Fuel Burns including the target fuel burn associated with any start ups. As a clarification, only the hours in which a Site’s generation was equal to or greater than the minimum loadings identified in Table 1 of Appendix E will be included in the Monthly Target Fuel Burn. In addition, only start-ups for outages greater than 24 hours duration shall be included in the Monthly Target Fuel Burn. Outages of less than 24 hours duration and units with generation less than the minimum loadings identified in Table 1 of Appendix E over a 24 hour period will be excluded from the Target Fuel Burn calculation. The Actual Fuel Burn is the sum of actual fuel burns for each participating Site.~~

~~Actual fuel used for generation shall be expressed in Gas Equivalent MMBtu by multiplying the MMBtu of oil consumption by 1.04 (the “Gas Conversion Factor”) to account for differences in the average Unit Heat Rates when burning oil versus natural gas. Deviations in the Gas Equivalent MMBtu for the month in comparison to the Target Btu shall be shared as follows: (a) LIPA shall absorb the cost of fuel used for Gas Equivalent MMBtu between 100% and 101 % of the Target Btu; (b) LIPA shall receive the savings resulting in the cost of fuel used for Gas Equivalent MMBtu between 99 % and 100 % of the Target Btu; (c) LIPA and GENCO shall share equally in the cost or savings resulting from Gas Equivalent MMBtu in excess of 101 % or less than 99%. No payments are contemplated under items (a) and (b) above.~~

~~For purposes of computing the incentives or disincentives, the cost of fuel shall be stated in dollars per Gas Equivalent MMBtu based on the cost of fuel actually burned for generation in each month (i.e. that month’s weighted average fuel cost) including fuel cost incentive or disincentives as defined in the Energy Management Agreement, and adjustment for the Gas Conversion Factor, applicable to the fuel oil burned. The annual maximum incentive or disincentive shall be \$1 million. If a significant change in the operation of GENCO’s steam units occurs the Parties shall mutually agree on modifications to the incentive/disincentive mechanism. In the event that LIPA does not approve amounts for operating and maintenance expenses and capital expenditure that provide GENCO with the same opportunity to maintain the Heat Rate target levels as GENCO has at the effective date of the rate established for Contract Year twelve, such target levels shall be equitably adjusted.~~

~~Any incentive/disincentive payments will be determined after the end of each month and will be reflected in the first monthly invoice following the end of each month.~~

## ~~V. Equivalent Forced Outage Rate Demand (EFORD) Incentive/Disincentive~~

~~GENCO will use its best efforts to maintain its generating units such that the Actual System EFORD of the GENCO units under the PSA as calculated by the New York Independent System Operator (“NYISO”) for the calendar year meets or exceeds the predetermined System Target EFORD as set forth below. NYISO calculates Unit EFORD using NERC GADS data submitted by GENCO.~~

~~The Unit EFORD (GADS) formula is set forth as follows:~~

$$\text{EFORD} = 100 * ((f * \text{FOH} + fp * \text{EFDH}) / (\text{SH} + f * \text{FOH}))$$

~~Where;~~

- ~~•  $f = (\# \text{ forced outages} / \text{FOH} + \# \text{ attempted starts} / \text{RSH}) / (\# \text{ Forced Outages} / \text{FOH} + \# \text{ attempted starts} / \text{RSH} + \# \text{ actual starts} / \text{SH})$~~
- ~~•  $fp = \text{SH} / \text{AH} = \text{SH} / (\text{SH} + \text{RSH})$~~
- ~~• SH = Service Hours~~
- ~~• FOH = Forced Outage Hours~~
- ~~• EFDH = Equivalent Forced Derated Hours~~
- ~~• RSH = Reserve Hours~~

~~Note: The NYISO methodology does not penalize GENCO for transmission related outages and therefore excludes FOH and EFDH from the EFORD calculation if such hours are associated with transmission related events.~~

~~To determine the Actual System EFORD, the calendar year Unit EFORD’s approved by the NYISO will be load weighted by the average 1993-1997 Summer DNMC for each unit. Example data and associated System EFORD result is provided below as “Example System EFORD Calculation.”~~

~~The maximum incentive/disincentive will be \$500,000 annually. A dead band of +/- 0.25% points around the System Target EFORD will apply in which no incentive or disincentive will be incurred.~~

~~Should the Actual System EFORD be below the System Target EFORD dead band, LIPA will make a payment to GENCO equal to \$6,667 for each 0.01% that the Actual System EFORD for the calendar year was below the System Target EFORD dead band. The maximum incentive would be earned when the Actual System EFORD is 1.00% below the System Target EFORD. In the event that the Actual System EFORD is above the System Target EFORD dead band, GENCO will make a payment to LIPA equal to \$6,667 for each 0.01% that the Actual System EFORD for the calendar year exceeded the System Target EFORD dead band. The maximum disincentive would be incurred when the Actual System EFORD is 1% above the System Target EFORD~~

~~The System Target EFORD are based on all of the existing GENCO Steam and internal combustion units in service and covered under the PSA. The System Target EFORD will remain fixed unless (a) LIPA exercises its option to ramp down its GENCO capacity purchases, or (b) any GENCO unit is mothballed, retired, significantly derated, incurs a long term outage, or is otherwise removed from service in whole, or in part. In such event, the subject units will be removed from this incentive/disincentive calculation for the entire calendar year of the event. The System Target EFORD for that year and any subsequent years will be revised by multiplying the System Target EFORD as shown in the table below by the ratio A/B, where:~~

- ~~• A = Average Annual System EFORD calculated without units “removed” before and during the given calendar year, for all years from 2008 through the prior calendar year.~~
- ~~• B = Average Annual System EFORD for all years from 2008 through the prior calendar year.~~

Table of System Target EFORd

- EFORd Incentive/Disincentive -					
Year	Disincentive Range		System Target EFORd	Incentive Range	
	Maximum	Minimum		Minimum	Maximum
2008	n/a	n/a	14.00%	n/a	n/a
2009	13.50%	12.75%	12.50%	12.25%	11.50%
2010	12.50%	11.75%	11.50%	11.25%	10.50%
2011	11.75%	11.00%	10.75%	10.50%	9.75%
2012	11.00%	10.25%	10.00%	9.75%	9.00%
2013	-	-	TBD	-	-

Examples of revisions to System Target EFORd for groups of units removed from service in successive years are provided below for illustrative purposes.

### ~~Example System EFORD Calculation – LI PSA Units~~

	Summer-DMNC	12-Month
Unit	Avg-1993-1997	EFORD
EFBar-Stm-1	191.4	1.58
EFBar-Stm-2	192.0	1.01
Far-Rock-Stm-4	107.8	47.52
Glwd-Stm-4	108.8	2.77
Glwd-Stm-5	111.0	0.42
Northport-Stm-1	374.4	1.90
Northport-Stm-2	384.2	7.02
Northport-Stm-3	368.4	7.27
Northport-Stm-4	384.0	6.68
Port-Jeff-Stm-3	189.6	1.87
Port-Jeff-Stm-4	191.4	21.01
EFB-GT-1	15.6	11.86
EFB-GT-2	15.2	49.34
EFB-GT-3	14.8	0.06
EFB-GT-4	14.6	4.40
EFB-GT-5	14.8	4.47
EFB-GT-6	14.8	12.10
EFB-GT-7	14.6	23.98
EFB-GT-8	14.6	8.07
EFB-JE-9	39.6	20.97
EFB-JE10	39.0	36.34
EFB-JE11	38.4	19.02
EFB-JE12	38.6	16.30
EH-Diesels	6.0	13.35
EHMPT-GT1	19.4	8.02
GLWD-GT1	14.8	24.01
GLWD-GT2	49.8	44.89
GLWD-GT3	50.6	56.32
HLTS-JE-1	48.6	39.15
HLTS-JE-2	48.6	44.37
HLTS-JE-3	50.4	18.99
HLTS-JE-4	50.4	16.85
HLTS-JE-5	51.6	35.59
HLTS-JE-6	50.0	17.93
HLTS-JE-7	49.0	19.16
HLTS-JE-8	50.4	21.05
HLTS-JE-9	51.8	35.65
HLTS-JE10	51.8	50.03
MTK-Diesels	6.0	49.18
Northport-GT1	14.2	51.43
P-JEFF-GT1	14.8	17.66
SHR-GT1	48.8	24.47
SHR-GT2	17.4	28.12
STHAMPT-GT1	10.4	0.79
STHLD-GT4	12.0	85.65
WADR-GT1	80.0	14.02
WADR-GT2	80.6	37.38
WADR-GT3	80.8	6.19
WBAB-GT4	46.6	27.69

System	3,932	13.98
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# Example EFORd Target Revisions

Initial Target Table

Initial	EFORd Incentive/Disincentive Targets				
	Disincentive Range		System	Incentive Range	
Year	Maximum	Minimum	Targets	Minimum	Maximum
2008	n/a	n/a	14.00%	n/a	n/a
2009	13.50%	12.75%	12.50%	12.25%	11.50%
2010	12.50%	11.75%	11.50%	11.25%	10.50%
2011	11.75%	11.00%	10.75%	10.50%	9.75%
2012	11.00%	10.25%	10.00%	9.75%	9.00%
2013			TBD		

## Rev.1. Remove EFB GT 9-12 during Year of 2009

13.60 A = 2008 System EFORd (not including units retired in 2009)  
13.98 B = 2008 System EFORd  
0.973 Multiply all initial targets for 2009-2102 by Ratio A/B

Rev.1	EFORd Incentive/Disincentive Targets				
	Disincentive Range		System	Incentive Range	
Year	Maximum	Minimum	Targets	Minimum	Maximum
2008	n/a	n/a	14.00%	n/a	n/a
2009	13.16%	12.41%	12.16%	11.91%	11.16%
2010	12.19%	11.44%	11.19%	10.94%	10.19%
2011	11.46%	10.71%	10.46%	10.21%	9.46%
2012	10.73%	9.98%	9.73%	9.48%	8.73%
2013			TBD		

## Rev.2. Remove EFB GT 9-12 during Year of 2009

15.01 A1 = 2008 System EFORd (not including units retired in 2009-2010)  
12.48 A2 = 2009 System EFORd (not including units retired in 2009-2010)  
13.98 B1 = 2008 System EFORd  
11.88 B2 = 2009 System EFORd  
13.745 A = AVERAGE (A1, A2)  
12.930 B = AVERAGE (B1, B2)  
1.063 Multiply all initial targets for 2010-2012 by Ratio A/B

Rev.2	EFORd Incentive/Disincentive Targets				
	Disincentive Range		System	Incentive Range	
Year	Maximum	Minimum	Targets	Minimum	Maximum
2008	n/a	n/a	14.00%	n/a	n/a
2009	13.16%	12.41%	12.16%	11.91%	11.16%
2010	13.22%	12.47%	12.22%	11.97%	11.22%
2011	12.43%	11.68%	11.43%	11.18%	10.43%
2012	11.63%	10.88%	10.63%	10.38%	9.63%
2013			TBD		

Unit	Summer DMNC Avg	12-Month EFORd		
	1993-1997	2008	2009*	2010*
EFBar-Stm-1	191.4	1.58	3.72	n/a
EFBar-Stm-2	192.0	1.01	9.55	n/a
Far-Rock-Stm-4	107.8	47.52	32.65	30.65
Glwd-Stm-4	108.8	2.77	13.25	11.25
Glwd-Stm-5	111.0	0.42	12.75	10.75
Northport-Stm-1	374.4	1.90	4.29	2.29
Northport-Stm-2	384.2	7.02	5.14	3.14
Northport-Stm-3	368.4	7.27	0.84	-
Northport-Stm-4	384.0	6.68	1.66	-
Port-Jeff-Stm-3	189.6	1.87	0.67	-
Port-Jeff-Stm-4	191.4	21.01	1.34	-
EFB-GT-1	15.6	11.86	10.85	n/a
EFB-GT-2	15.2	49.34	16.49	n/a
EFB-GT-3	14.8	0.06	22.60	n/a
EFB-GT-4	14.6	4.40	12.13	n/a
EFB-GT-5	14.8	4.47	-	n/a
EFB-GT-6	14.8	12.10	6.06	n/a
EFB-GT-7	14.6	23.98	22.77	n/a
EFB-GT-8	14.6	8.07	6.08	n/a
EFB-JE-9	39.6	20.97	n/a	n/a
EFB-JE10	39.0	36.34	n/a	n/a
EFB-JE11	38.4	19.02	n/a	n/a
EFB-JE12	38.6	16.30	n/a	n/a
EH-Diesels	6.0	13.35	21.32	19.32
EhMPT-GT1	19.4	8.02	73.66	71.66
GLWD-GT1	14.8	24.01	-	-
GLWD-GT2	49.8	44.89	80.21	78.21
GLWD-GT3	50.6	56.32	55.39	53.39
HLTS-JE-1	48.6	39.15	7.43	5.43
HLTS-JE-2	48.6	44.37	21.61	19.61
HLTS-JE-3	50.4	18.99	29.94	27.94
HLTS-JE-4	50.4	16.85	12.48	10.48
HLTS-JE-5	51.6	35.59	15.40	13.40
HLTS-JE-6	50.0	17.93	66.78	64.78
HLTS-JE-7	49.0	19.16	9.23	7.23
HLTS-JE-8	50.4	21.05	17.02	15.02
HLTS-JE-9	51.8	35.65	50.14	48.14
HLTS-JE10	51.8	50.03	40.32	38.32
MTK-Diesels	6.0	49.18	22.30	20.30
Northport-GT1	14.2	51.43	-	-
P-JEFF-GT1	14.8	17.66	71.40	69.40
SHR-GT1	48.8	24.47	40.47	38.47
SHR-GT2	17.4	28.12	-	-
STHAMPT-GT1	10.4	0.79	16.65	14.65
STHLD-GT4	12.0	85.65	53.64	51.64
WADR-GT1	80.0	14.02	30.02	28.02
WADR-GT2	80.6	37.38	4.44	2.44
WADR-GT3	80.8	6.19	10.10	8.10
WBAB-GT4	46.6	27.69	-	-

System MW 3,932  
System EFORd 13.98

3,777  
11.88

3,274

System EROd (not including units retired in 2009) 13.60  
System EFORd (not including units retired in 2009-2010) 15.01 12.48

Any EFORd incentive/disincentive payment will be determined within three months after the calendar year for which performance is being measured and will be reflected in the April invoice of each calendar year.

**FOURTH  
AMENDMENT**

~~Dated as of March 22, 2007~~

~~to~~

**POWER SUPPLY AGREEMENT**

~~between~~

~~LONG ISLAND LIGHTING COMPANY~~

~~and~~

~~KEYSPAN GENERATION LLC~~

~~Dated as of~~

~~June 26, 1997~~

~~This FOURTH AMENDMENT (the "Amendment") is made and entered into as of March 22, 2007, by and between LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation ("LIPA"), and KEYSPAN GENERATION LLC, a New York limited liability company ("GENCO"), to the Power Supply Agreement, by and between LIPA and GENCO, dated as of June 26, 1997 (as amended, supplemented or otherwise modified from time to time, the "PSA").~~

**RECITALS**

~~WHEREAS, GENCO owns and operates certain Generating Facilities (as defined in the PSA), including the Northport generating facility (the "Northport Plant") and the Port Jefferson generating facility (the "Port Jefferson Plant"); and~~

~~WHEREAS, LIPA is purchasing capacity and energy from the Northport Plant and the Port Jefferson Plant pursuant to rates, terms and conditions established in the PSA; and~~

~~WHEREAS, GENCO has agreed pursuant to the Agreement and Waiver that as promptly as practicable following the Effective Date, and subject to technical, environmental and economic feasibility and the receipt of all required regulatory approvals reasonably satisfactory to the parties, GENCO will implement a detailed work program and install General Electric Dense Pack turbine efficiency improvement systems or their equivalent, including last stage turbine blades, designed to modernize and enhance the operations and environmental performance of the Northport Plant Unit Nos. 3 and 4 and, in connection with such turbine upgrade and in order to decrease NO<sub>x</sub> emissions from Northport Plant Unit~~

Nos. 3 and 4, install advanced NO<sub>x</sub> control systems at Northport Plant Unit Nos. 3 and 4; and

~~WHEREAS, GENCO has also agreed pursuant to the Agreement and Waiver that within a reasonable time following the completion of the upgrades to Northport Plant Unit Nos. 3 and 4 described above, and subject to technical, environmental and economic feasibility and the receipt of all required regulatory approvals reasonably satisfactory to the parties, GENCO will implement a detailed work program and install General Electric Dense Pack turbine efficiency improvement systems or their equivalent, designed to modernize and enhance the operations and environmental performance of the Northport Plant Unit Nos. 1 and 2 and, in connection with such turbine upgrade and in order to decrease NO<sub>x</sub> emissions from Northport Plant Unit Nos. 1 and 2, install advanced NO<sub>x</sub> control systems at Northport Plant Unit Nos. 1 and 2; and~~

~~WHEREAS, GENCO has also agreed, pursuant to the Agreement and Waiver, that within a reasonable time following the Effective Date, and subject to technical, environmental and economic feasibility and the receipt of all required regulatory approvals reasonably satisfactory to the parties, GENCO will implement and install advanced NO<sub>x</sub> emission control systems on Units 3 and 4 of the Port Jefferson Plant; and~~

~~WHEREAS, in consideration of GENCO's agreement to make such turbine upgrades and install such advanced NO<sub>x</sub> emission controls, charges to LIPA with respect to capacity and energy supplied from the Northport Plant and the Port Jefferson Plant are to be adjusted as provided in the Amendment;~~

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ~~Article II. DEFINITIONS~~

~~Definitions. All capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the PSA.~~

## ~~Article III. AMENDMENTS TO PSA~~

~~Amendment to Article 1 of the PSA. Article 1 of the PSA is hereby amended by inserting the following new definitions in the appropriate alphabetical order:~~

~~"Agreement and Waiver" shall mean that Agreement and Waiver, dated as of March 22, 2007, by and among National Grid USA, KeySpan Corporation, KeySpan Electric Services LLC, KeySpan Generation LLC, KeySpan Energy Trading Services LLC, the Long Island Lighting Company d/b/a LIPA and the Long Island Power Authority.~~

~~"Turbine Upgrades" shall mean GE Dense Pack turbine efficiency systems, or equivalent, to be installed at Northport Plant Unit Nos. 1, 2, 3, and 4 and, in the case of Northport Plant Unit Nos. 3 and 4, shall also include new last stage turbine blades as generally described in Section 4 of the Agreement and Waiver.~~

~~"New Emission Controls" shall mean, advanced NO<sub>x</sub> emission control systems for the Northport Plant Unit Nos. 1-4 and the Port Jefferson Plant Unit Nos. 3 and 4 as generally described in Section 4 of the Agreement and Waiver.~~

~~“Northport Plant” means GENCO’s 1500 MW generating facility located in Northport, New York.~~

~~“Port Jefferson Plant” means GENCO’s 350 MW generating facility located in Port Jefferson, New York.~~

~~Section 2.2 — Amendment to Appendix A of the PSA. At such time as the parties shall agree, but in no event later than 60 days prior to the anticipated in-service date of the initial Turbine Upgrades or New Emission Controls, GENCO shall file Appendix A of the PSA (in the form attached hereto as Annex 2) with the FERC pursuant to Section 205 of the Federal Power Act to amend and replace in its entirety the current Appendix A of the PSA and to become effective concurrently with the earliest date on which the Turbine Upgrades and/or New Emission Controls to be installed at the Northport Plant and the Port Jefferson Plant begin commercial operation.~~

### SYNERGY SAVINGS

~~Pursuant to the Agreement and Waiver, the parties thereto have agreed to an amount of estimated synergy savings resulting from the National Grid/KeySpan Corporation merger (the “Synergy Savings Amount”, as defined in the Agreement and Waiver), a portion of which is to be allocated to GENCO’s operations (the “LIPA PSA Net Synergies”). The parties hereto acknowledge that, since a portion of the LIPA PSA Net Synergies will be paid to LIPA pursuant to the Agreement and Waiver, in any proceeding before FERC for the setting of rates under the PSA following the Effective Date of this Amendment, the cost of service calculation for the test year shall be modified by crediting to GENCO an amount as set forth in Annex 1 for that year (pro-rated to match the test year). If as determined pursuant to the provisions of Section 2.2 of the Agreement and Waiver the amount of synergy savings allocated to GENCO increased, then GENCO shall receive additional credit to its cost of service in the amount so determined.~~

~~The parties hereto further acknowledge that due to the expected timing of completion of the National Grid/KeySpan Corporation merger, some of the LIPA PSA Net Synergies may not have yet been achieved and reflected in GENCO’s books and records and, therefore, that such amounts may be included in GENCO’s cost of service for the test year selected for purposes of the FERC rate proceeding to establish rates for the remaining term of the PSA. In such event, the parties hereto agree that GENCO shall reduce the amount of the LIPA PSA Net Synergies that are credited to GENCO’s cost of service pursuant to the above paragraph, by an amount that equals the LIPA PSA Net Synergies not yet achieved. The parties also agree that any inflationary adjustments up to 2.5 percent per year between the test year and rate year will not be affected by the LIPA PSA Net Synergies, such adjustments having been reflected in the Synergy Savings Amount (as defined in Sections 2.1 and 2.2 of the Agreement and Waiver). GENCO shall separately identify and account for the actual costs to achieve LIPA PSA Net Synergies. Such information, together with other reasonably available data used to monitor the progress of National Grid’s integration activities, shall be utilized to estimate the reduction to the LIPA PSA Net Synergies.~~

~~———— The parties hereto further agree that the modifications to GENCO’s cost of service calculation described in the two preceding paragraphs shall be applied during any other proceeding that may be before FERC concerning rates under the PSA.~~



~~Article IV.~~  
~~MISCELLANEOUS~~

~~Effective Date.~~ This Amendment shall be effective upon satisfaction of each of the following conditions (the date upon which all such conditions are satisfied, the "Effective Date"): (i) approval (satisfactory to LIPA and GENCO) of this Fourth Amendment from the New York State Comptroller; (ii) the FERC shall have permitted (satisfactory to LIPA and GENCO) this Fourth Amendment to become effective; and (iii) the Agreement and Waiver shall have become effective pursuant to its terms and be in full force and effect. The conditions set forth in items (i), (ii) and (iii) above are hereinafter referred to as the "Approvals." Upon receipt of the Approvals from the New York State Comptroller and the New York State Attorney General, LIPA shall provide GENCO with copies thereof.

~~Section 4.2. Affirmation of Representations.~~ The representations and warranties of GENCO set forth in Section 21.9.1 of the PSA shall be true and correct in all material respects as of the Effective Date. The representations and warranties of LIPA set forth in Section 21.9.2 of the PSA shall be true and correct in all material respects as of the Effective Date.

~~Section 4.3. Miscellaneous.~~

(a) ~~Except as amended hereby, the PSA shall remain in full force and effect. The parties shall cooperate in preparation of an amended and restated PSA which incorporates the provisions of the original PSA and all amendments thereto, including this Amendment to be effective as of the Effective Date.~~

(b) ~~This Amendment shall be governed, including, without limitation, as to validity, interpretation and effect, by the Laws of the State of New York.~~

(c) ~~This Amendment may be executed in two or more counterparts which together shall constitute a single agreement.~~

*{Remainder of page left blank for signatures}*

~~IN WITNESS WHEREOF, the parties have caused this Amendment to be executed and delivered by their duly authorized officers or representatives as of the date first above written.~~

~~LONG ISLAND LIGHTING COMPANY  
d/b/a LIPA~~

~~By /s/ Richard M. Kessel  
Name: Richard M. Kessel  
Title: CEO & President~~

~~KEYSPAN GENERATION LLC~~

~~By /s/ John J. Bishar Jr.  
Name: John J. Bishar Jr.  
Title: Executive Vice President~~

## **Annex 1**

### **PSA Synergy Credits Calendar Year**

<b>Year</b>	<b>Amount (US \$)</b>
2007	2,313,247
2008	4,705,597
2009	6,944,658
2010	9,291,618
2011	10,123,237
2012	10,446,570
2013	4,442,200
Total	\$48,267,127

**Annex 2**  
**Appendix A**  
**Revised for Application in Contract Years Seven through Eleven**  
**Per Settlement and Order dated \_\_\_\_\_ in KeySpan Generation LLC, FERC Docket**  
**No. ER04-112-000/001<sup>†</sup>**

~~This Appendix provides the manner of setting the Monthly Capacity Charge, the Monthly Variable Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls for each of the first sixteen Contract Years under the Power Supply Agreement (“PSA”). This Appendix assumes that if the Closing Date occurs after January 1 of a calendar year, sixteen Contract Years may occur during the 180-month term of the PSA. Two of the Contract Years will be partial calendar years and the assessment of the then applicable annual revenue requirement through the Monthly Capacity Charge and the Monthly Capacity Charge for Turbine Upgrades and Emissions Controls will be prorated accordingly.~~

**~~I. — Monthly Capacity Charge:~~**

~~A. — The Monthly Capacity Charge is 1/12th of the annual Capacity Charge. In addition, the Monthly Capacity Charge for the fourth month of each Contract Year after the first Contract Year shall include any true-up adjustment due under Sections III and V-B.2 of this Appendix. The Monthly Capacity Charge for any partial months shall be prorated on a daily basis for such month.~~

~~B. — The annual Capacity Charge for the first Contract Year is \$291,596,000, reflecting the revenue credit described in Section I-C below. The annual Capacity Charge for the seventh Contract Year is \$305,400,000, reflecting the \$7.1 million revenue credit described in Section I-C below. For each Contract Year thereafter (other than the twelfth Contract Year), the annual Capacity Charge is equal to the prior year annual Capacity Charge plus the sum of the following adjustments:~~

- ~~(1) Budgeted Incremental Net Utility Plant, times PTROR;~~
- ~~(2) Budgeted Incremental Depreciation Expense;~~
- ~~(3) Labor Cost Index Adjustment (Production);~~
- ~~(4) Labor Cost Index Adjustment (Support);~~
- ~~(5) Benefit Cost Index Adjustment (Production);~~
- ~~(6) Benefit Cost Index Adjustment (Support);~~
- ~~(7) Rebased property tax amount described in Section III-B below;~~
- ~~(8) Federal income tax adjustment for cost of removal described in Section I-G below; and~~
- ~~(9) Incremental Synergy Savings.~~

~~C. — The annual Capacity Charge for the twelfth Contract Year shall be established by recalculating GENCO’s revenue requirement in accordance with Articles 8 and 9 of the PSA and through application to the Federal Energy Regulatory Commission pursuant to Section 205 of the Federal Power Act and allocating this amount for recovery through the appropriate charges. The revenue requirement allocated for collection through the Monthly Capacity Charge will reflect a credit to LIPA equal to \$5,100,000 in the first Contract Year. An additional revenue credit of \$2,020,000 will be applied to the otherwise applicable revenue requirement in the second Contract Year and the total revenue credit of \$7,120,000 shall continue for each of the remaining 14 Contract Years of the initial term of the PSA.~~

~~D. — Adjustments that are positive shall be added to the revenue requirement to be collected through the Capacity Charge; adjustments that are negative shall be subtracted from such revenue requirement.~~

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<sup>†</sup>—This draft includes Appendix A provisions reflected in the Joint Stipulation approved by the Commission's June 17, 1999 Notice of Finality of Initial Decision dated April 15, 1999 in FERC Docket No. ER98-011-000.

~~E. The Annual Capacity Charge assumes a federal income tax rate of 35% and a state income tax rate of 9.03%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be automatically incorporated into the formula and the effect of the statutory change will be reflected in the annual Capacity Charge concurrently with the statutory change.~~

~~F. The Annual Capacity Charge shall also be adjusted in the eighth through eleventh Contract Years to reflect the amortization of the deferral of property taxes for calendar year 2004 that exceed the base amount of \$126,600,000 established in Section III-B below.~~

~~G. The level of federal income tax expense included in the cost of service for each of Contract Years seven through eleven will reflect a deduction for the cost of removal equal to \$14.103 million. That amount will be reconciled each Contract Year to the actual cost of removal recorded on KeySpan Generation's books and the resulting change in federal income tax expense will be added to or subtracted from the Plant Additions True-up calculated pursuant to Section III-C below.~~

~~H. This Section I is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII.~~

## **II. Monthly Variable Charge:**

~~The Monthly Variable Charge for the first eleven Contract Years is \$0.90 per MWH of net generation of GENCO generating units delivered to LIPA during each month. The Monthly Variable Charge for Contract Years after the eleventh Contract Year shall be set in accordance with Articles 8 and 9 of the PSA.~~

## **III. True-Up Adjustments:**

~~A. In the fourth month following the end of each Contract Year, an annual lump sum surcharge or credit will be due from or to LIPA, respectively, for the Tax True-up and the Plant Additions True-up. Except as provided in Section III-B and the amount attributable to Section III-C(3) hereof, this surcharge or credit will include a carrying charge calculated as follows. With respect to the Tax True-up portion of the surcharge or credit, interest will be applied at the Base Interest Rate on the full amount of the True-up as of July 1 of the Contract Year through the due date of the lump sum surcharge or credit. With respect to the Plant Additions True-up portion of the surcharge or credit, the Base Interest Rate will be applied to the outstanding amount computed as of the end of the Contract Year from the first day after the close of the Contract Year through the date the surcharge or credit is paid.~~

~~B. The Tax True-up shall be equal to the actual property tax paid by GENCO on its Generating Facilities during the Contract Year, minus the base year property tax. The base year property tax amount will be \$126,600,000 for Contract Year seven. Any difference between \$126.6 million and the actual amount of property taxes recorded on KeySpan Generation's books in Contract Year seven will be deferred by KeySpan Generation with interest calculated at a rate equal to KeySpan Generation's weighted average cost of capital of 7.17% and applied at that rate as of July 1, 2004. This deferred amount inclusive of interest as described herein will be amortized on a straight line basis over the next four Contract Years and charged back to LIPA through an additional component to the Monthly Capacity Charge. The annual amortization will include interest at the 7.17% rate on the monthly unamortized balances of the deferral amount. LIPA, at its sole option, can elect to prepay any or all of this deferred property tax at any time throughout Contract Years eight through eleven, but LIPA shall pay all of the deferred amount by the end of Contract Year eleven. In each of Contract Years eight through eleven, the base year property tax amount will be revised to equal the actual amount of property taxes KeySpan Generation recorded on its books in the previous Contract Year. The base year property tax for Contract Year twelve shall be determined under Articles 8 and 9 of the PSA.~~

~~C. The Plant Additions True-up shall be the sum of:~~

- ~~(1) Actual Incremental Depreciation Expense minus Budgeted Incremental Depreciation Expense;~~
- ~~(2) (i) Actual Incremental Net Utility Plant minus Budgeted Incremental Net Utility Plant, times (ii) PTROR, and~~
- ~~(3) the amount of any adjustment derived pursuant to Section I-G hereof.~~

~~D. This Section III is not applicable to the capital investments for Turbine Upgrades and New Emissions Controls described in Sections IV and VIII;~~

#### ~~IV. Monthly Capacity Charge For Turbine Upgrades and New Emission Controls~~

~~A. Beginning on the date on which the Turbine Upgrades and New Emission Controls begin commercial operation, LIPA shall pay a Monthly Capacity Charge For Turbine Upgrades and New Emission Controls for each Contract Year that will be equal to 1/12th of the Annual Capacity Charge for Turbine Upgrades and New Emission Controls. The Annual Capacity Charge for Turbine Upgrades and New Emission Controls in any Contract Year shall be the sum of the following costs attributable to the Turbine Upgrades and New Emission Controls, provided, that recovery of the Annual Capacity Charge for Turbine Upgrades and New Emission Controls for any given year shall not exceed the fuel and emissions savings attributable to these items, as calculated in accordance with Section VIII (the "Fuel and Emission Savings"):~~

- ~~(1) Depreciation expense for the Turbine Upgrades and New Emission Controls based on the applicable composite depreciation rate for the related property unit;~~
- ~~(2) Net utility plant for the Turbine Upgrades and New Emission Controls multiplied by a rate of return assuming 100% debt financing with an interest rate equal to that obtainable by an A rated issuer of 20 year fixed rate tax exempt debt determined as of June 30, 2007, and~~
- ~~(3) Cumulative Annual Capacity Charges for costs of Turbine Upgrades and New Emission Controls in years that exceed the Fuel and Emission Savings shall be recovered, with an appropriate return (using the same tax exempt rate referred to in Section IV.A.2 above), subject to the procedure set forth in paragraph E below.~~

~~B. Reserved~~

~~C. Prior to the beginning of each Contract Year, the Annual Capacity Charge for Turbine Upgrades and New Emission Controls will be calculated in the manner set forth above based on the budgeted level of net utility plant for the Turbine Upgrades and New Emission Controls forecasted to be included in rate base during such Contract Year; provided, that such Annual Capacity Charge shall not exceed the level of Fuel and Emission Savings that are expected to be experienced for that Contract Year as calculated in accordance with Section VIII. The parties agree that the budgeted Annual Capacity Charges and the budgeted Fuel and Emission Savings shall be trueed up to the actual amounts for such Contract Year using the methodology set forth in Section III, paragraph A above, except that interest on the trueed up amounts shall be calculated using the same tax exempt rate as is used for the Annual Capacity Charges.~~

~~D. At the conclusion of each Contract Year, the Annual Capacity Charge for Turbine Upgrades and New Emission Controls for that year will be compared to the actual Fuel and Emission Savings for that Contract Year. In the event that the Annual Capacity Charge for Turbine Upgrades and New Emission Controls calculated at the beginning of that Contract Year exceeded the actual Fuel and Emission Savings for that Contract Year, GENCO shall refund the excess to LIPA within four (4) months after the end of~~

~~that Contract Year, and the excess shall be included in amounts that are subject to payment in future years in accordance with Paragraph IV.E and IV.F below.~~

~~E. Annual Capacity Charges for Turbine Upgrades and New Emission Controls that cannot be recovered in the Contract Year in which they are incurred because they exceed the Fuel and Emission Savings for such Contract Year shall be deferred, and shall be included in the calculation of the Annual Capacity Charge for Turbine Upgrades and New Emission Controls as set forth in Section IV.A.3 above for recovery no earlier than the second Contract Year following the Contract Year in which Annual Capacity Charges were incurred.~~

~~F. In the event that the PSA is not renewed on substantially the same terms and conditions at the expiration of its initial term, and notwithstanding anything herein to the contrary, LIPA shall pay to GENCO, not later than four (4) months after the expiration of the PSA, a lump sum payment equal to the cumulative amount of any remaining Fuel and Emission Savings not previously applied to offset Annual Capacity Charges, but only to the extent of any Annual Capacity Charges for Turbine Upgrades and New Emission Controls that have not been previously offset by such Fuel and Emission Savings and have not been previously recovered pursuant to this section.~~

## ~~V. Reopeners~~

### ~~A. ROE~~

~~During the term of the PSA, either party may petition the Commission to revise the return on common equity component of the revenue requirement underlying the Monthly Capacity Charge. During the seventh through eleventh Contract Years, such petition may be filed in the event that the average weekly yield on 10 year U.S. Treasury bonds over any 3 consecutive month period exceeds or falls below the average weekly yield on such bonds for the 3 month period ending December 31, 2003 by more than 200 basis points. The average weekly yield on 10 year U.S. Treasury bonds over the 3 month period ending December 31, 2003 was 4.25%. For purposes of implementing this ROE Reopener, the return on common equity used in the derivation of the Contract Year seven settlement annual revenue requirement shall be assumed to be 9.5%.~~

~~The party making such petition shall seek to change the Monthly Capacity Charge by only the revenue amount required to reflect the changed rate of return including related taxes, as applied to the then applicable rate base. In addition to delineating the change in the Monthly Capacity Charge, the petition shall specify the proposed new rate of return on equity and shall demonstrate that the new rate of return is just and reasonable within the meaning of Section 205 of the Federal Power Act. The party making such request may not propose to change any other component of the revenue requirement used to determine the Monthly Capacity Charge and the Monthly Variable Charge. The other party may oppose the proposed change in Monthly Capacity Charge and provide evidence of mitigating factors that would reduce the amount of the proposed change. The petitioning party may respond to such allegation of mitigating factors, provided that such response does not propose to change the amount of adjustment of the revenue requirement included in the original petition. Unless otherwise agreed by GENCO and LIPA, if the Commission approves a change in the Monthly Capacity Charge, the new base used for determining whether the rate may be reopened again shall be the average weekly yield on 10 year U.S. Treasury bonds over the 3 month period ending in the month before the Commission issues an order approving the change in the Monthly Capacity Charge.~~

~~When the annual Capacity Charge is reset in the twelfth Contract Year in accordance with Section I C, the average weekly yield on 10 year U.S. Treasury bonds over the 3 month period ending in the month before the new Monthly Capacity Charge becomes effective will be the new base for determining whether the rate may be reopened thereafter. The new return on equity will be specified at that time as well.~~

~~B. A&G~~

~~1. One Time Allocation Reopener~~

~~Either party may petition the Commission to make the limited rate change described in this paragraph in order to adjust the allocations of Administrative and General and Common (“A&G”) cost components of the revenue requirement underlying the Monthly Capacity Charge. The amount of A&G included in the annual revenue requirement as of the Closing Date is \$45,420,000. After the Closing Date, the personnel of the holding company (“HoldCo”) created by the combination of Long Island Lighting Company and Brooklyn Union Gas Company, and HoldCo’s subsidiaries that perform A&G functions will expand the use of time sheets and perform other direct costing methods to determine the appropriate allocation of their efforts and associated costs. Such data will be provided to LIPA for review and verification. In the twenty-fifth month after the Closing Date, GENCO shall provide LIPA with the results of the time sheet study and the results of any other direct costing methodology agreed upon by GENCO and LIPA, and the parties will undertake to agree upon an appropriate reallocation of A&G costs allocable to LIPA through GENCO. If the parties agree, the agreed upon reallocation shall be filed with the Commission as a change in rate under Section 205 of the Federal Power Act. If the parties fail to agree by the close of the twenty-eighth month after the Closing Date, then within thirty days, GENCO or LIPA may file its proposed allocation with the Commission under Sections 205 or 206 of the Federal Power Act, respectively. The other party may oppose the reallocation and propose any different allocation. Any Commission order adjusting the revenue requirement to account for a new allocation of A&G costs shall be retroactive to the beginning of the twenty-fifth month after the Closing Date and shall prevail through the end of the sixth Contract Year.~~

~~2. True-up for New Business Ventures~~

~~If HoldCo or its subsidiaries engage in any new business ventures or form new corporate subsidiaries to engage in new business ventures after the Closing Date, HoldCo shall identify on its time sheets, or through other direct costing methods, the amount of A&G costs attributable to such new business ventures during the first twenty-four months after the Closing Date. To the extent that such amounts exceed \$2,000,000 in either of the two consecutive twelve-month periods following the Closing Date, GENCO shall pay LIPA forty-four percent (44%) of the excess above \$2,000,000 for each such twelve-month period. Such payment shall be made in one lump sum between the beginning of the twenty-fifth month and before the end of the twenty-eighth month following the Closing Date.~~

~~**VI. Definitions:**~~

~~For purposes of this Appendix A, the following capitalized terms shall have the meaning specified below. Terms defined in PSA Article I shall have the same meaning in this Appendix as they have elsewhere in the PSA.~~

~~A. “Accumulated Deferred Federal Income Tax Asset” means the sum of the plant-related operating depreciation deferred tax asset or liability reserves as recorded on GENCO’s books and records under the Federal Energy Regulatory Commission Uniform System of Accounts and Generally Accepted Accounting Principles. The phrase “operating depreciation deferred tax asset or liability reserves” refers to the portion of the deferred federal income tax asset or liability reserves associated with 1) the difference between a) the sum of the net tax basis of the transferred plant assets as stepped-up to book value at the Closing Date and the net tax basis of new additions and b) the net book basis of GENCO’s plant assets, times 2) the statutory federal income tax rate.~~

~~B. “Approved Net Plant Additions” means aggregate capital additions approved under Article 9 and placed in service, plus capital additions not included in an approved Capital Improvement Budget at the beginning of a Contract Year but later approved by LIPA (but not including cost overruns on items included in a budget approved by LIPA), minus aggregate scheduled retirements.~~

C. ~~“Actual Incremental Depreciation Expense” means the sum of the 12 monthly calculations of actual Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.~~

D. ~~“Actual Incremental Net Utility Plant” means the sum of 1) the 13 Month Average of actual Approved Net Plant Additions, minus 2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, and plus 3) the 13 Month Average of the difference between the ending and beginning Accumulated Deferred Federal Income Tax Asset.~~

E. ~~“Attrition Factor” means, for the purpose of computing the Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for the Contract Years eight through eleven, the following amounts for the appropriate Contract Years:~~

<u>Contract Year</u>	<u>Attrition Factor</u>
Eight	(1 .01)
Nine	(1 .02)
Ten	(1 .03)
Eleven	(1 .04)

~~Any Attrition Factor applicable to Contract Years after Contract Year twelve shall be determined under Articles 8 and 9 of the PSA.~~

F. ~~“Budgeted Incremental Depreciation Expense” means the sum of the 12 monthly calculations for the Contract Year of scheduled monthly Approved Net Plant Additions, times 1/12th of the Composite Depreciation Rate by type.~~

G. ~~“Budgeted Incremental Net Utility Plant” means 1) the 13 Month Average of Approved Net Plant Additions, minus 2) the 13 Month Average of the excess of ending accumulated depreciation reserve over beginning accumulated depreciation reserve, and plus 3) the 13 Month Average of the difference between the ending and beginning Accumulated Deferred Federal Income Tax Asset.~~

H. ~~“Composite Depreciation Rate” means the annual rate to be applied to gross plant to determine annual depreciation expense. The appropriate rate for each item of steam production plant, other production plant, common plant and electric general plant is set forth on the attached Exhibit I.~~

I. ~~“Defined Labor Index” means, for the Contract Years 1999–2000, 3.5% per year, the effective percentage wage increase provided in LILCO’s collective bargaining agreement dated February 14, 1996. The Defined Labor Index used in the adjustment for the second Contract Year shall be the appropriate index multiplied by a fraction equal to (the number of days from the Closing Date through December 31 divided by 365). For each Contract Year after Contract Year 2000 through the eleventh Contract Year, the Defined Labor Index shall be the percentage change for the twelve month period ending on the preceding September 30 for the Employment Cost Index for Wages and Salaries Only, Private Industry Workers, Northeast, Not Seasonally Adjusted, as published by the United States Bureau of Labor Statistics. The Defined Labor Index for Contract Years after Contract Year eleven shall be determined under Articles 8 and 9 of the PSA.~~

J. ~~“Incremental Synergy Savings” means, with the exceptions noted below, the sum of the twelve monthly amounts set forth in the table below for the applicable Contract Months for each Contract Year. For purposes of this definition, the term “Contract Month” shall mean the number of the month, from 1 to 127, in consecutive order starting with the month in which the Closing Date occurs:~~

<u>12 Month Period</u>	<u>Monthly Amount</u> <u>(\$ In 000’s)</u>
------------------------	---



<del>1-12</del>	<del>0</del>
<del>13-24</del>	<del>564</del>
<del>25-36</del>	<del>292</del>
<del>37-48</del>	<del>293</del>
<del>49-60</del>	<del>287</del>
<del>61-72</del>	<del>279</del>
<del>73-84</del>	<del>137</del>
<del>85-91</del>	<del>92</del>
<del>92-127</del>	<del>(622.5)</del>

~~If GENCO and LIPA agree during the establishment of the Annual Capacity Charge for the seventh Contract year, that the total revenue requirements to be recovered during that Contract Year reflects all or a portion of the Incremental Synergy Savings for that or subsequent Contract Years set forth above, the Incremental Synergy Savings to be applied under the Appendix A will be reduced accordingly.~~

~~K. —“Labor Cost Index Adjustment (Production)” and “Benefit Cost Index Adjustment (Production)” for the Contract Years eight through eleven means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of (the Defined Labor Index times the Attrition Factor) times the prior Contract Year base labor and benefit costs. The base year labor costs (production) for the seventh Contract Year will be \$41.944 million and the base year benefit costs (production) for the seventh Contract Year will be \$5.800 million. The sum of the prior Contract Year base labor costs (production) and benefit costs (production) and the Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment. The Labor Cost Index Adjustment (Production) and Benefit Cost Index Adjustment (Production) for Contract Years after Contract Year eleven, including the appropriate attrition factor, shall be determined under Articles 8 and 9 of the PSA.~~

~~L. —“Labor Cost Index Adjustment (Support)” and “Benefit Cost Index Adjustment (Support)” for the Contract Years eight through eleven means the sum of (1) the base labor and benefit costs for the prior Contract Year and (2) the product of the Defined Labor Index times the prior Contract Year base labor and benefit costs. The base year labor costs (support) for the seventh Contract Year will be \$17.278 million and the base year benefit costs (support) for the seventh Contract Year will be \$5.572 million. The sum of the prior Contract Year base labor costs (support) and benefit costs (support) and the Labor Cost Index Adjustment (Support) and Benefit Cost Index Adjustment (Support) for a year shall be the “prior Contract Year base labor and benefit costs” used for the following Contract Year’s adjustment. The Labor Cost Index Adjustment (Support) and Benefits Cost Index Adjustment (Support) for Contract Years after Contract Year eleven shall be determined under Articles 8 and 9 of the PSA.~~

~~M. —“PTROR” means pre-tax return on rate base which shall be 9.8% for each of Contract Years seven through eleven. For years after Contract Year eleven, PTROR shall be established under Article 9 of the PSA. PTROR assumes a federal income tax rate of 35% and a state income tax rate of 9.03%. If the statutory federal or state income tax rate changes at any time during the contract life, the new tax rate will be automatically incorporated into the formula and the effect of the statutory change will be reflected into the PTROR concurrently with the statutory change.~~

~~N. —“13 Month Average” means a monthly average developed by 1) taking the sum of a) the first through eleventh monthly amounts to be averaged, b) one half of the twelfth monthly amount to be averaged, and e) one half of the prior year’s twelfth monthly amount to be averaged and 2) dividing the sum in 1) by 12.~~

## **~~VII. —Ramp Down Adjustment:~~**

~~Nothing herein shall be construed to predetermine the amount to be paid by LIPA to GENCO under Section I 1.1 of the PSA if LIPA exercises its ramp down option. In addition, the Monthly Capacity Charge for the remaining capacity shall be adjusted as a result of the ramp down.~~

### ~~VIII. Methodology for Calculating Fuel and Emission Savings~~

~~The following methodology shall be used to calculate the Fuel and Emissions Savings associated with the Turbine Upgrades and New Emission Controls for purposes of Section IV above.~~

~~A. Fuel Savings. In the three month period preceding the Turbine Upgrade outage, a turbine test will be conducted to determine the turbine efficiency for the unit. Within three (3) months after completion of the Turbine Upgrade, a turbine test will be conducted in accordance with KeySpan's existing turbine test procedures entitled, "Modified Turbine Test Procedure for Fossil Fueled Steam Generating Units" (current rev. June 4, 1999), to determine the as modified turbine efficiency. LIPA and its consultants shall have the right to review all test procedures, witness all tests and review and approve all calculations associated with the baseline and as modified tests, all such approvals not to be unreasonably withheld.~~

~~The percentage improvement in turbine efficiency will be multiplied by the overall unit heat rate to determine the BTU/KWh savings attributable to the Turbine Upgrades (e.g., 3% x 10,000 BTU/KWh = 300 BTU/KWh). At the end of each calendar year, the total number of MWh (megawatt hours) generated by the unit will be multiplied by the BTU/MWh savings calculated from the turbine efficiency testing described above to determine the total BTU savings for the year. The total BTUs saved as a result of the Turbine Upgrades will be multiplied by such year's average fuel cost (\$/10<sup>6</sup> BTU) for the unit to determine the annual fuel cost savings.~~

$$\text{Fuel cost savings} = \text{Total BTU savings} \times \text{Avg Fuel Cost } (\$/10^6 \text{ BTU})$$

~~B. Emissions Savings—Turbine Upgrades. In order to determine the emissions avoided and emission credits saved as a result of the Turbine Upgrades, the achieved efficiency improvement following the installation of Turbine Upgrades on each Northport unit in BTUs/MWh (as calculated in accordance with Section A) shall be multiplied by the number of MWh produced for the calendar year at such unit and then multiplied by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission rate (in lbs/mmBTU) at such unit as determined by certified Continuous Emissions Monitoring Systems ("CEMs") records divided by 2000 (lbs/ton).~~

~~The value of such NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> Emission Savings shall be determined by multiplying the annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission savings in tons from all Northport units modified with Turbine Upgrades by the average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission credit price for all applicable NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub>, SO<sub>2</sub> and CO<sub>2</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed by the parties.~~

~~C. Emissions Savings—New Emissions Controls. In order to determine the effectiveness of, and the emission credit savings attributable to the New Emissions Controls, the NO<sub>x</sub> emission rate in lbs/MWh shall be measured using the plant's certified CEMs before and after the application of the NO<sub>x</sub> control technology on each unit. Such measurements shall be made on both natural gas fuel and fuel oil at the identical steady load over a three hour period, pursuant to the then in effect Environmental Protection Agency regulations. LIPA and its consultants shall have the right to review all test procedures, witness all tests and confirm all calculations associated with the baseline and as modified tests. The difference in NO<sub>x</sub> emission rate in lbs/MWh for each fuel at each unit shall be established as the achieved emission rate reduction for each unit and each fuel. The total tons of NO<sub>x</sub> emission avoided and the corresponding~~

~~emission credits saved each year following the application of NO<sub>x</sub> emission control technology on each unit shall be calculated as follows at the end of each calendar year:~~

~~Achieved emission rate reduction on gas (lbs/MWh) times the number of MWh produced on gas plus the achieved emission rate reduction on oil times the number of MWh produced on oil divided by 2000 (lbs/ton).~~

~~The value of such NO<sub>x</sub> emission savings shall be determined by multiplying the annual NO<sub>x</sub> emission savings in (tons) from all units modified by New Emission Controls by the average annual NO<sub>x</sub> emission credit price for all applicable NO<sub>x</sub> emission regulatory cap and trade programs. The average annual NO<sub>x</sub> emission price for such programs shall be as reported in "Air Daily" or other similar trade publication as mutually agreed upon by the parties.~~

~~D. Fuel and Emission Savings. Fuel and Emission Savings will be calculated as follows:~~

~~Sum of the savings from (A) Fuel Savings, (B) Emission Savings—Turbine Upgrades and (C) Emission Savings—New Emission Controls.~~

$$\text{Fuel and Emission Savings} = A + B + C$$

#### ~~IX. Excess Emissions Credits~~

~~To the extent that Emissions Credits saved as a result of the Turbine Upgrades and New Emission Controls are not required to satisfy the compliance obligations of the Northport Unit Nos. 1-4 and Port Jefferson Unit Nos. 3 and 4, such Emissions Credits shall be pooled with those attributable to GENCO's other generating stations under the PSA (for the term of the PSA) and such pooled credits shall be applied pro-rata to all such generating stations to meet their compliance obligations under applicable law. All Emissions Credits created in any year as a result of the Turbine Upgrades and New Emission Controls that are used to offset the Annual Capacity Charge and are not used to satisfy GENCO's compliance obligations under applicable law shall be deemed attributable to the Emission Credits savings derived from the Turbine Upgrades and New Emission Controls. If such Emissions Credits are sold, LIPA will receive 100 percent of the net proceeds. Alternatively, LIPA may use such Emissions Credits in its sole discretion. All other Emissions Credits shall be split in accordance with the sharing provisions in Section 17 of Schedule F to the Merger Agreement and Section 8.1.6 of the PSA.~~

~~EIGHTH~~

~~AMENDMENT~~

~~Dated as of June 24, 2011~~

~~to~~

~~POWER SUPPLY AGREEMENT~~

~~between~~

~~LONG ISLAND LIGHTING COMPANY~~

~~and~~

~~NATIONAL GRID GENERATION LLC~~

~~Dated as of~~

~~June 26, 1997~~

~~This EIGHTH AMENDMENT (the “Amendment”) is made and entered into as of June 24, 2011, by and between LONG ISLAND LIGHTING COMPANY d/b/a LIPA, a New York corporation (“LIPA”), and NATIONAL GRID GENERATION LLC, a New York limited liability company (“GENCO”), to the Power Supply Agreement, by and between LIPA and GENCO, dated as of June 26, 1997 (as amended, supplemented or otherwise modified from time to time, the “PSA”). LIPA and GENCO are sometimes referred to herein individually as a “Party” and collectively as the “Parties”)~~

## ~~RECITALS~~

~~WHEREAS, GENCO owns and operates certain Generating Facilities (as defined in the PSA), including Unit 4 of the Far Rockaway Power Station (such unit “Far Rockaway”) and Units 4 and 5 of the Glenwood Power Station (such units collectively “Glenwood” and both Far Rockaway and Glenwood are also referred to herein as the “Ramp Down Units”);~~

~~WHEREAS, LIPA is currently purchasing all of the capacity and energy from the Ramp Down Units pursuant to rates, terms and conditions established in the PSA;~~

~~WHEREAS, the Parties have agreed to a Ramp Down of Far Rockaway and Glenwood in accordance with the terms and conditions of the PSA, as modified by this Amendment;~~

~~WHEREAS, following Ramp Down, GENCO intends to Retire (as defined herein) each of Far Rockaway and Glenwood;~~

~~WHEREAS, the Parties have determined to memorialize their understanding with regard to the Ramp Down of Far Rockaway and Glenwood and, in connection therewith, amend certain provisions of the PSA as herein provided; and~~

~~WHEREAS, the Parties agree that this Amendment is not intended to establish a precedent related to any other term or condition of the PSA for the remainder of its term or with respect to any future negotiated power purchase agreement between the Parties related to LIPA’s purchase of capacity and/or energy from GENCO, including a renewed PSA;~~

~~NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:~~

## ~~ARTICLE 1~~

### ~~DEFINITIONS~~

#### ~~Section 1.1. Definitions.~~

~~—— (a) — All capitalized terms used in this Amendment and not otherwise defined shall have the meanings assigned to them in the PSA.~~

~~——(b)—— The following capitalized terms used in this Amendment shall have the meanings provided below:~~

~~"Approvals" is defined in Section 6.2.~~

~~"Economic Equivalent Payment" is defined in Section 2.2(d).~~

~~"Effective Date" is defined in Section 6.2.~~

~~"Generation Attributes" is defined in Section 2.3(b).~~

~~"NYISO" means the New York Independent System Operator, Inc.~~

~~"NYPSC" means the New York Public Service Commission.~~

~~"OASIS" shall have the same meaning as provided in 18 C.F.R. Part 37.~~

~~"Ramp Down Date" is defined in Section 2.1(a).~~

~~"Ramp Down Units" is defined in the Recitals.~~

~~"Retirement" shall mean actions, such as shutdown, abandonment, or decommissioning that remove a Ramp Down Unit from service permanently, but shall exclude scheduled maintenance and forced outages. The terms "Retire" and "Retired" shall have correlative meanings to Retirement.~~

~~"Retirement Eligible" as used with respect to a Ramp Down Unit shall mean that the Transmission Upgrades related to such Ramp Down Unit have been completed.~~

~~"Retirement Orders" means NYISO Technical Bulletin 185 and the *Order Adopting Notice Requirements for Generation Unit Retirements*, issued by the NYPSC in Case No. 05-E-0889 on December 20, 2005.~~

~~"Transmission Upgrades" means all reinforcements to LIPA's transmission system that are reasonably necessary to permit the Retirements of Far Rockaway and Glenwood consistent with the Retirement Orders and Attachment Y of the NYISO Open Access Transmission Tariff. For the avoidance of doubt, while it is expected that reinforcements of LIPA's system are the only capital investments necessary to permit such Retirements, the term "Transmission Upgrades" does not include (i) any reinforcements to the transmission system of any party other than LIPA, or (ii) the placing into service of new generation, in either case that may be necessary for such Retirements.~~

## ARTICLE 2

### RAMP DOWN

#### ~~Section 2.1 — Ramp Down of Far Rockaway and Glenwood.~~

~~(a) — Ramp Down Date. LIPA and GENCO agree that the Ramp Down of Far Rockaway and Glenwood shall have economic effect as of May 27, 2011 (the “Ramp Down Date”) in accordance with the PSA as modified by this Amendment notwithstanding that the Effective Date does not occur until a later time.~~

~~(b) — Operation of Far Rockaway and Glenwood. Notwithstanding the Ramp Down of Far Rockaway and Glenwood and the otherwise applicable provisions of Article 11 of the PSA, GENCO agrees to continue to supply Capacity, Energy and Ancillary Services from each of Far Rockaway and Glenwood under the PSA until such time as such Ramp Down Unit becomes Retirement Eligible.~~

~~(c) — Risk of Loss/Indemnification. Until such time as each of Far Rockaway and Glenwood becomes Retirement Eligible, the Parties shall continue to bear the risk of loss and liabilities with respect to such Ramp Down Unit consistent with the terms of the PSA. After the Ramp Down Unit becomes Retirement Eligible, LIPA shall have no risk of loss or liability with respect to such Ramp Down Unit except as otherwise provided in this Amendment.~~

~~(d) — Notifications. Pursuant to the Retirement Orders, GENCO is required to provide notice to the NYPSC, NYISO and LIPA at least 180 days in advance of the Retirement of any Generating Facility, including Far Rockaway or Glenwood. Upon the placement into service of the Transmission Upgrades for each of Far Rockaway and Glenwood, LIPA shall post notice on its OASIS (with respect to each Ramp Down Unit) and shall give notice of such posting to GENCO within 5 days thereafter.~~

#### ~~Section 2.2 — Economic Impact of Ramp Down. Following the Effective Date the Parties agree as follows with regard to the economic impact of the Ramp Down:~~

~~(a) — Capacity Charges. GENCO will bill LIPA (and LIPA shall pay GENCO) with respect to Far Rockaway and Glenwood for the remaining original term of the PSA for (i) those components of the Capacity Charge attributable to Far Rockaway and Glenwood, as set forth on Schedule A and (ii) any variable charges billable pursuant to the PSA with respect to each such Ramp Down Unit that has not become Retirement Eligible. Except as provided in the preceding sentence, the Monthly Capacity Charge shall exclude the separately billed charges relating to Far Rockaway and Glenwood as stated on Schedule A. GENCO shall use the normal billing procedures under the PSA with respect to all such charges, except that charges specifically relating to Far Rockaway and Glenwood shall be identified as separate line items.~~

~~(b) — Incentives. The incentive calculations set forth in Appendix F of the PSA shall be adjusted to reflect the removal of the applicable Ramp Down Unit in accordance with the following schedule: (i) Annual DMNC Incentive as of the calendar year in which each such unit becomes Retirement Eligible on or before October 31; (ii) Annual Summer Availability~~

~~Incentive as of the calendar year in which each such unit becomes Retirement Eligible on or before August 31; (iii) Heat Rate Incentive as of the month in which each such unit becomes Retirement Eligible; and (iv) EFORD Incentive as of the calendar year in which each such unit becomes Retirement Eligible.~~

~~(c) — Ramp Down Payment. Notwithstanding the Ramp Down, LIPA shall have no obligation to pay GENCO the lump sum Ramp Down payment otherwise owed pursuant to Article 11 of the PSA.~~

~~(d) — Economic Equivalent Payment. As a result of the Ramp Down of Far Rockaway and Glenwood pursuant to this Amendment, GENCO will pay to LIPA an amount that reasonably approximates the economic benefits LIPA would have realized from the Ramp Down of each of Far Rockaway and Glenwood in the absence of this Amendment. Such benefits (the “Economic Equivalent Payment”) shall be calculated and paid in accordance with Schedule B. Fifty percent (50%) of the Economic Equivalent Payment for each of Far Rockaway and Glenwood shall be made not more than 10 days following the date LIPA advises GENCO that such Ramp Down Unit has become Retirement Eligible with the remaining fifty percent (50%) for each Ramp Down Unit being paid at the end of the original term of the PSA.~~

~~(e) — Monthly Capacity Charge True-Up. The Monthly Capacity Charge for the month immediately following the Effective Date will include an appropriate reconciliation of (i) the amounts paid by LIPA in the absence of the effectiveness of this Amendment with respect to the Ramp Down Units for the period commencing on the Ramp Down Date through the Effective Date and (ii) the amount payable pursuant to Schedule A and other provisions of this Amendment if this Amendment had been in effect as of the Ramp Down Date.~~

~~(f) — Miscellaneous. For the avoidance of doubt, it is understood and agreed that: (i) the Ramp Down Date for Far Rockaway and Glenwood is the same; (ii) completion of the Transmission Upgrades and other tasks necessary for the Retirement of each of Far Rockaway and Glenwood may occur at different times and may be pursued and accomplished independently of the tasks necessary for the Retirement of the other; and (iii) notwithstanding subsection (d) above, LIPA shall not be entitled to receive any Economic Equivalent Payment with respect to any Ramp Down Unit for which the Transmission Upgrades have not been placed into service as of the expiration of the original term of the PSA.~~

### Section 2.3 — Dispositions and Rights Following Completion of Transmission Upgrades.

~~(a) — Schedule F Rights. Nothing contained herein is intended or shall be deemed to be a waiver or modification of the Parties’ respective rights with regard to the future use of the Far Rockaway and Glenwood sites pursuant to Schedule F of the Merger Agreement.~~

~~(b) — Generating Facility Attributes. Except as otherwise provided in this Amendment, following the Retirements of each of Far Rockaway and Glenwood, GENCO shall own any and all rights and attributes (the “Generation Attributes”) that may accrue to Far Rockaway and Glenwood as former electric generating facilities (e.g., emission reduction credits and Capacity Resource Interconnection Status (CRIS) rights consistent with the NYISO Open~~



~~Access Transmission Tariff). Notwithstanding the foregoing, the Parties agree that for so long as GENCO owns the Generation Attributes, GENCO, upon LIPA's request, will transfer to LIPA or its designee any such attributes to facilitate additional electric generation on Long Island; provided, that GENCO shall be fully compensated in an amount equal to the fair market value of such attributes as determined at the time of the request. In the event GENCO elects to sell all or any portion of the Generation Attributes to a third party, GENCO shall first offer to LIPA the opportunity to purchase the applicable Generation Attributes at the same price GENCO has received in a bona fide offer from a third party to purchase such Generation Attributes. If LIPA does not elect to purchase the Generation Attributes, GENCO may proceed to sell such Generation Attributes to a third party.~~

~~(c) — Step Up Transformers. LIPA will retain ownership of any step up transformers at Far Rockaway and Glenwood.~~

~~(d) — Off System Sales. In the event that Far Rockaway or Glenwood continue to operate after becoming Retirement Eligible, the revenue sharing provisions under Article 11 of the PSA with respect to such Generating Facility will continue until the earlier of the expiration of the original term of the PSA or the Retirement of the Generating Facility in question.~~

~~Section 2.4 — Remaining Capacity Blocks. Upon the Effective Date of this Amendment, LIPA's Ramp Down rights pursuant to Article 11 of the PSA with respect to Capacity Blocks 2 (E.F. Barrett 1 & 2) and 3 (Port Jefferson 3 & 4) shall immediately expire.~~

## ARTICLE 3

### TRANSMISSION FACILITIES

~~Section 3.1 — Transmission Upgrades. LIPA covenants that it will use commercially reasonable efforts to complete and place into service the Transmission Upgrades as expeditiously as practicable, but in no event later than June 30, 2012. The Transmission Upgrades shall be installed at the sole cost and expense of LIPA.~~

~~Section 3.2 — Relocation of Transmission and Distribution Facilities. LIPA agrees that it will relocate its electric transmission and distribution facilities, and any related equipment owned by LIPA, located at Far Rockaway and Glenwood as necessary to accommodate decommissioning or demolition of such Ramp Down Units. Any sharing of costs for such relocation shall be determined by LIPA and National Grid Electric Services, LLC. Such relocation shall occur as expeditiously as practicable, but in no event later than September 30, 2012.~~

~~Section 3.3 — Completion of Transmission Upgrades and Relocations. It being understood that time is of the essence with regard to completion of the Transmission Upgrades and transmission relocations required under Sections 3.1 and 3.2, LIPA shall (i) include the cost of these projects in its 2011/12 capital budget, (ii) not remove these projects from the capital budget or workplan and (iii) prioritize their completion prior to the dates set forth above.~~

## ARTICLE 4

### PROPERTY TAXES

~~Section 4.1 — Property Tax Challenges. Upon the Effective Date of this Amendment, and notwithstanding any other agreements or arrangements between the Parties to the contrary, GENCO shall have the right, in its sole discretion, to challenge property taxes with respect to the Far Rockaway Power Station and the Glenwood Power Station in any tax year. LIPA shall take no actions that would in any way prejudice the likelihood of success in prosecuting such proceedings.~~

~~Section 4.2 — Allocation of Tax Savings. Any tax reductions obtained with respect to Far Rockaway and Glenwood and/or any refunds received related to tax years prior to expiration of the PSA shall accrue solely to LIPA.~~

~~Section 4.3 — 2012-13 Tax Year. LIPA and GENCO agree to take all steps necessary to file a challenge to the property taxes assessed with respect to Far Rockaway and Glenwood for the 2012-13 tax years.~~

~~Section 4.4 — Allocation of Property Taxes for Far Rockaway and Glenwood Post Retirement. To the extent that GENCO continues to own and operate utility equipment on the sites of Far Rockaway and Glenwood after Retirement other than the Ramp Down Units and continues to incur property taxes on such utility property or on the retired generating sites themselves, GENCO or its affiliates shall allocate any property taxes assessed on such properties among the remaining assets and site property of the Far Rockaway Power Station and the Glenwood Power Station as applicable in accordance with the procedures and principles attached hereto in Schedule C.~~

## ARTICLE 5

### AMENDMENTS TO PSA

~~Section 5.1 — Amendment to PSA. The PSA shall be deemed amended as necessary to give effect to the provisions of this Amendment and remains in full force and effect. In the event of conflict between this Amendment and the other provisions of the PSA, the provisions of this Amendment shall prevail.~~

## ARTICLE 6

### MISCELLANEOUS

~~Section 6.1 — FERC Filing. GENCO shall file this Amendment with FERC requesting acceptance pursuant to Section 205 of the Federal Power Act. LIPA shall file an intervention in support of such filing.~~

~~Section 6.2 — Effective Date. This Amendment shall be effective upon satisfaction of each of the following conditions (the date upon which all such conditions are satisfied, the “Effective Date”): (i) approval (reasonably satisfactory to LIPA and GENCO) of this Amendment by the New York State Comptroller and the New York State Attorney General; and (ii) acceptance of this Amendment for filing by the FERC without material modification. The conditions set forth in items (i) and (ii) above are hereinafter referred to as the “Approvals.” Upon receipt of the Approvals from the New York State Comptroller and the New York State Attorney General, LIPA shall provide GENCO with copies thereof.~~

~~Section 6.3 — Additional Matters.~~

~~(a) — This Amendment is controlling only with respect to the matters addressed herein and shall not be deemed to have established any precedent, or prejudice either Party’s rights or obligations, with regard to any other matters under the PSA or with regard to any extension of the PSA or any successor agreement.~~

~~(c) — This Amendment shall be governed, including, without limitation, as to validity, interpretation and effect, by the Laws of the State of New York.~~

~~(d) — This Amendment may be executed in two or more counterparts which together shall constitute a single agreement.~~

~~(e) Except as agreed in writing by the Parties, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions set forth in this Amendment, or challenge the validity of this Amendment, through any means, including without limitation through any application to the Commission pursuant to the provisions of Sections 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof. Except as agreed in writing by the Parties, the standard of review for (a) any modification to this Amendment requested by a Party that is not agreed to by both Parties and (b) any modification to this Amendment initiated by the Commission or requested by any party other than a Party to this Amendment will be the public interest standard under the *Mobile Sierra* doctrine as described in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010) and *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) (construing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)).~~

*{Remainder of page left blank for signatures}*

~~IN WITNESS WHEREOF~~, the parties have caused this Amendment to be executed and delivered by their duly authorized officers or representatives as of the date first above written.

~~LONG ISLAND LIGHTING COMPANY~~  
~~d/b/a LIPA~~

By: ~~\_\_\_\_/s/ Michael D. Hervey~~  
Name: Michael D. Hervey  
Title: ~~Chief Operating Officer~~

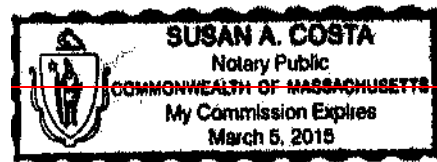
~~NATIONAL GRID GENERATION LLC~~

By: ~~\_\_\_\_/s/ John G Cochrane~~  
Name: John G. Cochrane  
Title: ~~President~~

~~COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX~~

~~On the 24th day of June, 2011, before me personally came John G. Cochrane, to me known to be the individual described in the foregoing instrument in his capacity as President, of National Grid Generation LLC, the corporation described in and which executed the foregoing instrument, who being duly sworn did acknowledge that he/she executed same on behalf National Grid Generation LLC and that he/she was authorized to execute same on behalf of National Grid Generation LLC.~~

~~/s/ Susan A. Costa  
Notary Public~~



**~~SCHEDULE A~~**

**~~CALCULATION OF CAPACITY CHARGES~~**

**Capacity Charges - May 28, 2011 through May 27, 2013 Calculated Monthly**  
(\$ in thousands)

**Schedule A**

**Capacity Charge - 2011**

Capacity Component	Glenwood	Far Rockaway	Total	
-Not Utility Plant	\$20,250	\$13,732	\$33,982	
-PTROR Return	2,396	1,624	4,020	
-Depreciation Expense	2,757	1,550	4,308	
-Base Labor and benefits Production	6,516	4,683	11,199	
-O&M Other Costs	2,524	3,015	5,539	
-401 K Match Costs	54	36	87	
-Working Capital Return	159	77	236	
-Less Cost of Removal	-162	-110	-271	
-ARO Amortization	95	64	159	
-Less Variable Revenue	-310	-142	-451	
-Less Other Revenue	-43	-29	-72	
-Less Revenue for tax Credit	-293	-199	-492	
----- Total	\$13,690	\$10,574	\$24,264	
<b>Monthly charge</b>	<b>\$1,141</b>	<b>\$884</b>	<b>\$2,022</b>	<b>(A)</b>
<b>5/28/11 - 12/31/11</b>	<b>\$8,177</b>	<b>\$6,314</b>	<b>\$14,490</b>	<b>(B)</b>

**Capacity Charge - 2012**

-Not Utility Plant	\$19,110	\$12,812	\$31,922	
-PTROR Return	2,261	1,516	3,776	
-Depreciation Expense	2,789	1,567	4,356	
-Base Labor and benefits Production	6,646	4,777	11,423	
-O&M Other Costs	2,524	3,015	5,539	
-401 K Match Costs	54	36	87	
-Working Capital Return	159	77	236	
-Less Cost of Removal	-162	-110	-271	
-ARO Amortization	95	64	159	
-Less Variable Revenue	-310	-142	-451	
-Less Other Revenue	-43	-29	-72	
-Less Revenue for tax Credit	-293	-199	-492	
----- Total	\$13,717	\$10,572	\$24,290	
<b>Monthly charge</b>	<b>\$1,143</b>	<b>\$884</b>	<b>\$2,024</b>	<b>(A)</b>
<b>1/1/2012 - 12/31/12</b>	<b>\$13,717</b>	<b>\$10,572</b>	<b>\$24,290</b>	<b>(B)</b>

**Capacity Charge - 2013 (January 1, 2013 - May 27, 2013)**

-Not Utility Plant	\$18,472	\$11,676	\$30,148	
-PTROR Return	911	576	1,486	
-Depreciation Expense	1,179	657	1,836	
-Base Labor and benefits Production	2,825	2,030	4,855	
-O&M Other Costs	1,052	1,256	2,308	
-401 K Match Costs	21	15	36	
-Working Capital Return	66	32	98	
-Less Cost of Removal	-67	-46	-113	
-ARO Amortization	39	27	66	
-Less Variable Revenue	-129	-59	-188	
-Less Other Revenue	-18	-12	-30	
-Less Revenue for tax Credit	-122	-83	-205	
----- Total	\$5,756	\$4,393	\$10,149	
<b>Monthly charge</b>	<b>\$1,151</b>	<b>\$879</b>	<b>\$2,030</b>	<b>(A)</b>
<b>1/1/2013 - 5/27/2013</b>	<b>\$5,756</b>	<b>\$4,393</b>	<b>\$10,149</b>	<b>(B)</b>

<b>(Totals - Agrees with Schedule B</b>	<b>\$27,650</b>	<b>\$21,279</b>	<b>\$48,929</b>	<b>Totals</b>
				<b>(B)</b>

(A) Glenwood and Far Rockaway amounts included in the ramp-down calculation are collected at these fixed amounts

(B) Totals of fixed amounts for respective periods

Property Taxes, OPEB & Pension Costs, allocated costs, and deferred FIT and SIT return will continue to be recoverable as a component of the capacity charges for the remaining term of the PSA.

**SCHEDULE B**  
**ECONOMIC EQUIVALENT PAYMENT**



**ECONOMIC EQUIVALENT PAYMENT (\$ in thousands)****Schedule B**

(Ramp down components – 5/28/2011 – 5/27/2013)

<b>Capacity Component</b>	<b>Glenwood 4&amp;5</b>	<b>Far Rockaway 4</b>	<b>Total</b>
PTROR Return	4,602	3,064	7,664
Depreciation Expense	5,614	3,150	8,764
Base Labor Production	10,041	7,253	17,294
Benefit Costs Production	3,321	2,354	5,673
O&M Other Costs	5,083	6,072	11,155
401-K Match Costs	103	72	175
Working Capital Return	320	155	475
Less Cost of Removal	-326	-221	-546
ARO Amortization	191	129	320
Less Variable Revenue	-624	-285	-909
Less Other Revenue	-86	-58	-145
Less Revenue for tax Credit	-590	-400	-990
<b>Total Capacity Charges (A) – Agrees with Totals per Schedule A</b>	<b>\$27,650</b>	<b>\$21,279</b>	<b>\$48,929</b>
<b>Present Value (8.16%)</b>	<b>\$25,568</b>	<b>\$10,680</b>	<b>\$45,248</b>
<b>Ramp Down Payment (62.5%)</b>	<b>\$15,980</b>	<b>\$12,300</b>	<b>\$28,280</b>
<b>Present Value Benefit to LIPA (37.5%)</b>	<b>\$9,588</b>	<b>\$7,380</b>	<b>\$16,968</b>
<b>Economic Equivalent Payment – Not Present Valued ((A) *37.5%)</b>	<b>\$10,369</b>	<b>\$7,980</b>	<b>\$18,348</b>
<b>50% of Economic Equivalent Payment – due when "retirement eligible"</b>	<b>\$5,184</b>	<b>\$3,990</b>	<b>\$9,174</b>
<b>Remaining Economic Equivalent Payment due to LIPA at 5/27/13</b>	<b>\$5,184</b>	<b>\$3,990</b>	<b>\$9,174</b>

**SCHEDULE C**

**PROPERTY TAX ALLOCATION METHODOLOGY**

## ~~Schedule C~~

### ~~ALLOCATION METHODOLOGY FOR PROPERTY TAXES AT GENERATING FACILITY SITES~~

~~The following allocation methodology shall be used for purposes of allocating property taxes among assets located at the Far Rockaway and Glenwood Power Station sites (the "Generating Facility Sites") in instances where property taxes for such assets are assessed on one common tax bill but the parties are financially responsible for sub-sets of those assets (by reason of ownership of the assets or contractual commitments). Specifically, the parties intend that this process will be used to allocate property taxes at the Generating Facility Sites among the Ramp Down Units and any other utility assets at each site, including other generation or utility assets for which LIPA is contractually obligated to reimburse GENCO for the associated property taxes.~~

~~The allocation process shall consist of (i) the appraiser selection process and (ii) the appraisal. This allocation process shall first be used for purposes of allocating the property taxes for the tax year that covers the period following May 28, 2013, and shall continue to be used by the parties (and their respective successors and assigns) with respect to each of the Generating Facility Sites until such time as LIPA is no longer financially responsible for any portion of the property taxes on a common tax bill.~~

#### ~~1. Appraiser Selection.~~

~~(A) LIPA and GENCO shall jointly select, retain and pay for mutually agreeable appraisers, with the related costs shared (50/50) between the parties. Selection must be completed within the time frame set forth in the appraisal schedule contained in Attachment 1 (the "Appraisal Schedule"). The real estate appraiser must be (i) nationally or regionally recognized, (ii) from a reputable firm and (iii) a certified general real estate appraiser; and in the case of the utility appraiser, be from a consulting firm highly experienced and qualified in the field of public utility valuation. A list of mutually agreeable appraisers is set forth on Attachment 2 (this list may be modified from time to time to add/remove appraisers as the parties may mutually agree). The parties shall commence the appraiser selection process immediately upon execution of the 8<sup>th</sup> Amendment.~~

~~(B) Genco and LIPA shall retain both a qualified real estate appraiser and a utility appraiser from the list on Attachment 2.~~

- ~~(i) The utility appraiser shall prepare an appraisal as of the applicable tax status dates of the utility assets at the Generating Facility Sites.~~
- ~~(ii) The real estate appraiser shall appraise, in fee simple absolute, the market value as of the applicable tax status dates of the land and improvements at the Generating Facility Sites.~~

~~(C) GENCO and LIPA shall obtain and review the following information from the appraiser prior to final selection:~~

- ~~(i) details on the process the appraisers will use for completing the appraisal;~~
- ~~(ii) the appraisers' credentials, which shall demonstrate knowledge of utility assets and/or industrial property transactions, relevant work experience and references;~~
- ~~(iii) details on any additional resources the appraisers will require in order to complete the appraisals; and~~
- ~~(iv) a complete listing of information the appraisers will need from GENCO and LIPA to complete the appraisal.~~

~~(D) Should LIPA or GENCO present a good faith objection to the continued use of a particular appraiser prior to the start of the appraisal process for a particular tax year, the parties agree to select another mutually agreeable appraiser from Attachment 2.~~

~~2. Appraisal Procedure. For each tax year, the parties shall utilize the following procedure:~~

~~(A) LIPA and GENCO, in coordination with the appraisers, shall finalize the list of materials needed by the appraisers to complete the appraisals. All information shall be provided to the appraisers and assembled by GENCO and LIPA jointly.~~

~~(B) There will be a conference among the parties and the appraisers, at a mutually agreeable date, to respond to any questions that the appraisers may have. The appraisers shall distribute draft reports for factual review before such conference. No conference with the appraisers shall take place without the presence of both GENCO and LIPA's representatives.~~

~~(C) Within the time period set forth in the Appraisal Schedule, the real estate appraiser shall prepare a self contained fee simple appraisal report in which he/she will set forth the fair market value of the land and improvements at the Generating Facility Sites.~~

~~(D) Within the time period set forth in the Appraisal Schedule, the utility appraiser shall prepare an appraisal report in which he/she will set forth the reproduction cost new less all forms of depreciation, including physical depreciation and functional and economic obsolescence, of the utility assets.~~

~~(E) Upon completion of the appraisals, each appraiser shall share the results with LIPA and GENCO, which shall be used as the basis for allocating financial responsibility for property taxes in the applicable tax year. The allocation of the property taxes between the land, improvements and various utility assets at each of the Generating Facility Sites shall be based on the relative fair market value of such land, improvements and utility assets at the Generating Facility Site as determined by the appraisers on the applicable tax status dates, in~~

~~accordance with the methodology described below in Section 3. An illustrative calculation is attached hereto as Attachment 3.~~

~~3. Appraisal Methodology.~~

~~(A) In completing the appraisals, the appraisers shall consider, as appropriate, the following:~~

- ~~(i) The physical condition of the assets, land and improvements on the relevant taxable status dates;~~
- ~~(ii) Any assets or liabilities associated with the utility assets, land and improvements that would affect the value of said utility assets, land and improvements;~~
- ~~(iii) An analysis of sale of comparable assets and land; and~~
- ~~(iv) Appropriate valuation methodologies.~~

~~(B) The appraisals shall conform to the Uniform Standards of Professional Appraisal Practice (USPAP).~~

~~(C) “Fair market value” for purposes of these appraisal methodologies shall be defined (i) for land and improvements, as the most probable price, as of the specified dates, more fully described below, in cash or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self interest, assuming neither is under duress; and (ii) for utility assets, as reproduction cost new less all forms of depreciation and obsolescence.~~

~~4. Dispute Resolution. Any dispute arising out of or relating to the implementation of the allocation process shall be resolved in accordance with the dispute resolution procedures set forth in Section 12.5 of the PSA.~~

## **~~ATTACHMENT 1~~**

### **~~APPRAISAL SCHEDULE~~**

<b><del>Task</del></b>	<b><del>Due Date</del></b>
<del>Parties jointly hire the appraisers</del>	<del>Not less than 6 months prior to the start of the applicable tax year</del>
<del>Both parties assemble documents required by the appraisers.</del>	<del>Not less than 4 months prior to the start of the applicable tax year</del>
<del>Conference with the appraisers; appraisers to share drafts of appraisal reports with the parties.</del>	<del>Not less than 3 months prior to the start of the applicable tax year</del>
<del>Appraisers completes appraisal effort and exchanges with the parties</del>	<del>Prior to the start of the applicable tax year.</del>

**~~ATTACHMENT 2~~**

**~~APPRAISERS~~**

~~The parties who are acceptable to GENCO and LIPA as appraisers are as follows:~~

**Utility**

~~Michael J. Diedrich, PE, ASA, CDP  
AUS Consultants  
8555 West Forest Home Avenue, Suite 201  
Greenfield, WI 53228  
(414) 529-5755~~

**Land**

~~Stephen Deutsch, IFA, CSA-G~~

~~Matthew J. Guzowski, MAI~~

~~Goodman—Marks Associates  
170 Old Country Road, Suite 501  
Mineola, New York 11501  
(516) 248-9777~~

~~ATTACHMENT 3~~

~~SAMPLE CALCULATION~~



Attachment 3—Sample Calculation

**Example of Relative Fair Market Value Allocation—Glenwood**

First Appraisal—begin immediately after approval of the 8th amendment. This would be the basis for relevant market value for tax year 7/1/2012–6/30/2013 (School) and Calendar Year 2013 for General.

Second Appraisal—Valued as of 1/2/2012. This would be the basis for relevant market value for tax year 7/1/2013–6/30/2014.

Third Appraisal—Valued as of 1/2/2013. This would be the basis for relevant market value for tax year 7/1/2014–6/30/2015.

Fourth Appraisal—Valued as of 1/2/2014.

	First				Second			
Assume assessor values assets as follows (\$ in millions):	Appraisal Amount	Relative Appraised MV	Example Only School Tax 7/1/12-6/30/13 (Only used 5/28/13-6/30/13)	General Tax 1/1/13-12/31/13 (Only used 5/28/13-12/31/13)	Appraisal Amount	Relative Appraised MV	Example Only Tax 7/1/1-6/30/14	General Tax 1/1/14-12/31/14
<b>—Utility property tax allocated as follows:</b>								
—Steam Generating Unit	90.0000	50.0%	7.3	3.0	90.0000	50.0%	7.3	3.0
—IC Generating Units	90.0000	50.0%	7.3	3.0	90.0000	50.0%	7.3	3.0
	<u>180.0000</u>	<u>100.0%</u>	<u>14.5</u>	<u>6.0</u>	<u>180.0000</u>	<u>100.0%</u>	<u>14.5</u>	<u>6.0</u>
<b>—Commercial for Land (currently Parcel 14) allocation:</b>								
—Land related to Steam Units	3.0000	75.0%	0.4	0.3	3.0000	75.0%	0.4	0.3
—Land related to IC Units	1.0000	25.0%	0.1	0.1	1.0000	25.0%	0.1	0.1
	<u>4.0000</u>	<u>100.0%</u>	<u>0.5</u>	<u>0.4</u>	<u>4.0000</u>	<u>100.0%</u>	<u>0.5</u>	<u>0.4</u>
<b>—Other Commercial Properties Allocation</b>								
—T&D Property	0.0950	95.0%	0.0	0.0	0.0950	95.0%	0.1	0.0
—Gas Property	0.0040	4.0%	0.0	0.0	0.0040	4.0%	0.0	0.0
—Other Genco Property—Steam Unit related	0.0005	0.5%	0.0	0.0	0.0005	0.5%	0.0	0.0
—Other Genco Property—IC Unit related	0.0005	0.5%	0.0	0.0	0.0005	0.5%	0.0	0.0
	<u>0.1000</u>	<u>100.0%</u>	<u>0.1</u>	<u>0.1</u>	<u>0.1000</u>	<u>100.0%</u>	<u>0.1</u>	<u>0.1</u>

**Example of Relative Fair Market Value Allocation—Far Rockaway**

First Appraisal—Valued as of 1/5/2012. This would be the basis for relevant market value for tax year 7/1/2012–6/30/2013.

Second Appraisal—Valued as of 1/5/2013. This would be the basis for relevant market value for tax year 7/1/2013–6/30/2014.

Third Appraisal—Valued as of 1/5/2014. This would be the basis for relevant market value for tax year 7/1/2014–6/30/2015.

Fourth Appraisal—Valued as of 1/5/2015. This would be the basis for relevant market value for tax year 7/1/2015–6/30/2016.

	First			Second		
Assume assessor values assets as follows (\$ in millions):	Appraisal Amount	Relative Appraised MV	Example Only Tax 7/1/12-6/30/13 (Only used 5/28/13-6/30/13)	Appraisal Amount	Relative Appraised MV	Example Only Tax 7/1/13-6/30/14
<b>—Utility property tax allocated as follows:</b>						
—Steam Generating Unit	90.0000	78.3%	2.5	90.0000	78.3%	2.5
—T&D Property	25.0000	21.7%	0.7	25.0000	21.7%	0.7
—Gas Property	0.0040	0.0%	0.0	0.0040	0.0%	0.0
—Service Property	0.0005	0.0%	0.0	0.0005	0.0%	0.0
—Lighttower Property	0.0005	0.0%	0.0	0.0005	0.0%	0.0
	<u>115.0050</u>	<u>100.0%</u>	<u>3.2</u>	<u>115.0050</u>	<u>100.0%</u>	<u>3.2</u>
<b>—Other Commercial Properties Allocation</b>						
<b>—Commercial for Land allocation:</b>						
—Land related to Steam Units	3.0000	75.0%	0.9	3.0000	75.0%	0.9
—Land related to FPL SubStation	1.0000	25.0%	0.3	1.0000	25.0%	0.3
	<u>4.0000</u>	<u>100.0%</u>	<u>1.2</u>	<u>4.0000</u>	<u>100.0%</u>	<u>1.2</u>

# Attachment A

**Revenue Data to Reflect Proposed Rates**

This Statement sets forth the revenue resulting from the changed rates under the Amended and Restated ("A&R") PSA applied to Period I.

The \$34,306,066.74 monthly fixed capacity charge is based on the \$411,672,800.84 revenue requirement divided by twelve as determined in accordance with Paragraphs I and IV of Appendix A to the A&R PSA. The \$.90/MWh variable rate is not being changed and is reflected accordingly. The Parties have agreed to modifications to (a) Charges for Base Load Operation for Internal Combustion Units, (b) Start-Up Charges for Steam Units, (c) Charges for Mwh Production at Peak Load, and (d) Charges for Fuel Swaps. These charges are set forth in Appendix B to the A&R PSA. Incentive Payments have been eliminated under the A&R PSA.

**Proposed Rates Period 1**

MONTH	PRODUCT NAME	TRANSACTION QUANTITY	PRICE	UNITS	TOTAL TRANSACTION CHARGE
Jan-2011	Capacity Charge	N/A	34,306,066.74	Flat Rate	34,306,067
Jan-2011	Energy	308,324	\$0.90	\$/MWh	277,492
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	2,476	\$10.38	\$/MWh	25,701
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,837	\$13.35	\$/MWh	64,574
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,693	\$16.39	\$/MWh	27,748
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	76	\$9.79	\$/MWh	744
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	542	\$18.02	\$/MWh	9,767
Jan-2011	Start-ups above threshold	N/A	N/A	N/A	229,733
Jan-2011	Swaps above threshold	N/A	N/A	N/A	9,425
Feb-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Feb-2011	Energy	338,560	\$0.90	\$/MWh	304,704
Feb-2011	Gas Turbine - Peak Load MegaWatt Hours	401	\$32.49	\$/MWh	13,028
Feb-2011	Gas Turbine - Peak Load MegaWatt Hours	133	\$40.05	\$/MWh	5,327
Feb-2011	Swaps above threshold	N/A	N/A	N/A	2,600
Mar-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Mar-2011	Energy	297,316	\$0.90	\$/MWh	267,584
Mar-2011	Gas Turbine - Peak Load MegaWatt Hours	6	\$32.49	\$/MWh	195
Mar-2011	Gas Turbine - Peak Load MegaWatt Hours	136	\$40.05	\$/MWh	5,447
Mar-2011	Swaps above threshold	N/A	N/A	N/A	975
Apr-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Apr-2011	Energy	315,391	\$0.90	\$/MWh	283,852
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	308	\$32.49	\$/MWh	10,007
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	497	\$40.05	\$/MWh	19,905
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	28	\$49.17	\$/MWh	1,377
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	24	\$54.08	\$/MWh	1,298
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	95	\$21.09	\$/MWh	2,004
Apr-2011	Swaps above threshold	N/A	N/A	N/A	1,300
May-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
May-2011	Energy	329,282	\$0.90	\$/MWh	296,354
May-2011	Gas Turbine - Peak Load MegaWatt Hours	102	\$32.49	\$/MWh	3,314
May-2011	Gas Turbine - Peak Load MegaWatt Hours	801	\$40.05	\$/MWh	32,080
May-2011	Gas Turbine - Peak Load MegaWatt Hours	62	\$34.71	\$/MWh	2,152
May-2011	Gas Turbine - Peak Load MegaWatt Hours	217	\$12.78	\$/MWh	2,773
May-2011	Swaps above threshold	N/A	N/A	N/A	325
Jun-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Jun-2011	Energy	426,373	\$0.90	\$/MWh	383,736
Jun-2011	Gas Turbine - Peak Load MegaWatt Hours	31	\$32.49	\$/MWh	1,007
Jun-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	103	\$18.02	\$/MWh	1,856
Jul-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Jul-2011	Energy	624,349	\$0.90	\$/MWh	561,914
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	5	\$32.49	\$/MWh	162
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	25	\$49.17	\$/MWh	1,229
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	298	\$21.09	\$/MWh	6,285
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	58	\$34.71	\$/MWh	2,013
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	574	\$12.78	\$/MWh	7,336
Jul-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,775	\$18.02	\$/MWh	31,986
Jul-2011	Swaps above threshold	N/A	N/A	N/A	325
Aug-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Aug-2011	Energy	940,290	\$0.90	\$/MWh	846,261
Aug-2011	Gas Turbine - Peak Load MegaWatt Hours	1,574	\$32.49	\$/MWh	51,139
Aug-2011	Gas Turbine - Peak Load MegaWatt Hours	92	\$54.08	\$/MWh	4,975
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	10,287	\$13.35	\$/MWh	137,331
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,362	\$16.39	\$/MWh	55,103
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	715	\$9.79	\$/MWh	7,000
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,534	\$18.02	\$/MWh	63,683
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	490	\$18.02	\$/MWh	8,830
Aug-2011	Swaps above threshold	N/A	N/A	N/A	1,525

**Proposed Rates Period 1**

MONTH	PRODUCT NAME	TRANSACTION QUANTITY	PRICE	UNITS	TOTAL TRANSACTION CHARGE
Sep-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Sep-2011	Energy	763,528	\$0.90	\$/MWh	687,175
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	550	\$32.49	\$/MWh	17,870
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	584	\$40.05	\$/MWh	23,389
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	17	\$54.08	\$/MWh	919
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	377	\$12.78	\$/MWh	4,818
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	544	\$10.38	\$/MWh	5,648
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	12,352	\$13.35	\$/MWh	164,899
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,531	\$16.39	\$/MWh	25,093
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	627	\$9.79	\$/MWh	6,138
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,066	\$18.02	\$/MWh	55,249
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,252	\$18.02	\$/MWh	22,561
Sep-2011	Swaps above threshold	N/A	N/A	N/A	9,240
Oct-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Oct-2011	Energy	444,351	\$0.90	\$/MWh	399,916
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	309	\$32.49	\$/MWh	10,039
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	32	\$54.08	\$/MWh	1,731
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	204	\$21.09	\$/MWh	4,302
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	85	\$34.71	\$/MWh	2,950
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	223	\$12.78	\$/MWh	2,850
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,248	\$10.38	\$/MWh	12,954
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	11,871	\$13.35	\$/MWh	158,478
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	289	\$16.39	\$/MWh	4,737
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	31	\$9.79	\$/MWh	303
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	2,210	\$18.02	\$/MWh	39,824
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	63	\$18.02	\$/MWh	1,135
Oct-2011	Start-ups above threshold	N/A	N/A	N/A	32,819
Oct-2011	Swaps above threshold	N/A	N/A	N/A	2,065
Nov-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Nov-2011	Energy	480,113	\$0.90	\$/MWh	432,102
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	36	\$49.17	\$/MWh	1,770
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	23	\$54.08	\$/MWh	1,244
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	62	\$21.09	\$/MWh	1,308
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	51	\$34.71	\$/MWh	1,770
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	589	\$12.78	\$/MWh	7,527
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	130	\$10.38	\$/MWh	1,349
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,852	\$13.35	\$/MWh	64,774
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	95	\$16.39	\$/MWh	1,557
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	42	\$9.79	\$/MWh	411
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,171	\$18.02	\$/MWh	21,101
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	186	\$18.02	\$/MWh	3,352
Nov-2011	Start-ups above threshold	N/A	N/A	N/A	65,638
Nov-2011	Swaps above threshold	N/A	N/A	N/A	110
Dec-2011	Capacity	N/A	34,306,066.74	Flat Rate	34,306,067
Dec-2011	Energy	407,609	\$0.90	\$/MWh	366,848
Dec-2011	Gas Turbine - Peak Load MegaWatt Hours	16	\$54.08	\$/MWh	865
Dec-2011	Gas Turbine - Peak Load MegaWatt Hours	227	\$12.78	\$/MWh	2,901
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,110	\$10.38	\$/MWh	11,522
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,097	\$13.35	\$/MWh	54,695
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	50	\$16.39	\$/MWh	820
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	29	\$9.79	\$/MWh	284
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	232	\$18.02	\$/MWh	4,181
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	48	\$18.02	\$/MWh	865
Dec-2011	Start-ups above threshold	N/A	N/A	N/A	94,663

Total Revenue 418,587,043

**Revenue Data to Reflect Changed Rates**

The attached documents detail the revenue data to reflect the present rates for Period I.

**Present Rates Period 1**

MONTH	PRODUCT NAME	TRANSACTION QUANTITY	PRICE	UNITS	TOTAL TRANSACTION CHARGE
Jan-2011	Capacity	N/A	35,989,263.22	Flat Rate	35,989,263
Jan-2011	Energy	308,324	\$0.90	\$/MWh	277,492
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	2,476	\$6.71	\$/MWh	16,614
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,837	\$8.69	\$/MWh	42,034
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,693	\$10.43	\$/MWh	17,658
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	76	\$9.79	\$/MWh	744
Jan-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	542	\$16.43	\$/MWh	8,905
Jan-2011	Start-ups above threshold	N/A	N/A	N/A	204,750
Jan-2011	Swaps above threshold	N/A	N/A	N/A	10,725
Feb-2011	Capacity	N/A	35,989,263.22	Flat Rate	35,989,263
Feb-2011	Energy	338,560	\$0.90	\$/MWh	304,704
Feb-2011	Gas Turbine - Peak Load MegaWatt Hours	401	\$20.13	\$/MWh	8,072
Feb-2011	Gas Turbine - Peak Load MegaWatt Hours	133	\$26.07	\$/MWh	3,467
Feb-2011	Swaps above threshold	N/A	N/A	N/A	2,600
Mar-2011	Capacity	N/A	35,989,263.22	Flat Rate	35,989,263
Mar-2011	Energy	297,316	\$0.90	\$/MWh	267,584
Mar-2011	Gas Turbine - Peak Load MegaWatt Hours	6	\$20.13	\$/MWh	121
Mar-2011	Gas Turbine - Peak Load MegaWatt Hours	136	\$26.07	\$/MWh	3,546
Mar-2011	Swaps above threshold	N/A	N/A	N/A	1,625
Mar-2011	Incentive	N/A	N/A	N/A	55,994
Apr-2011	Capacity	N/A	35,989,263.22	Flat Rate	35,989,263
Apr-2011	Energy	315,391	\$0.90	\$/MWh	283,852
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	308	\$20.13	\$/MWh	6,200
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	497	\$26.07	\$/MWh	12,957
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	28	\$31.29	\$/MWh	876
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	24	\$49.29	\$/MWh	1,183
Apr-2011	Gas Turbine - Peak Load MegaWatt Hours	95	\$18.30	\$/MWh	1,739
Apr-2011	Swaps above threshold	N/A	N/A	N/A	1,625
Apr-2011	Incentive	N/A	N/A	N/A	11,819
May-2011	Capacity	N/A	39,897,031.22	Flat Rate	39,897,031
May-2011	Energy	329,282	\$0.90	\$/MWh	296,354
May-2011	Gas Turbine - Peak Load MegaWatt Hours	102	\$20.13	\$/MWh	2,053
May-2011	Gas Turbine - Peak Load MegaWatt Hours	801	\$26.07	\$/MWh	20,882
May-2011	Gas Turbine - Peak Load MegaWatt Hours	62	\$33.18	\$/MWh	2,057
May-2011	Gas Turbine - Peak Load MegaWatt Hours	217	\$11.61	\$/MWh	2,519
May-2011	Swaps above threshold	N/A	N/A	N/A	325
May-2011	Incentive	N/A	N/A	N/A	136,943
Jun-2011	Capacity	N/A	36,770,816.82	Flat Rate	36,770,817
Jun-2011	Energy	426,373	\$0.90	\$/MWh	383,736
Jun-2011	Gas Turbine - Peak Load MegaWatt Hours	31	\$20.13	\$/MWh	624
Jun-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	103	\$16.43	\$/MWh	1,692
Jun-2011	Incentive	N/A	N/A	N/A	93,065
Jul-2011	Capacity	N/A	36,770,816.82	Flat Rate	36,770,817
Jul-2011	Energy	624,349	\$0.90	\$/MWh	561,914
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	5	\$20.13	\$/MWh	101
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	25	\$31.29	\$/MWh	782
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	298	\$18.30	\$/MWh	5,453
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	58	\$33.18	\$/MWh	1,924
Jul-2011	Gas Turbine - Peak Load MegaWatt Hours	574	\$11.61	\$/MWh	6,664
Jul-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,775	\$16.43	\$/MWh	29,163
Jul-2011	Swaps above threshold	N/A	N/A	N/A	1,300
Jul-2011	Incentive	N/A	N/A	N/A	28,841
Aug-2011	Capacity	N/A	36,770,816.82	Flat Rate	36,770,817
Aug-2011	Energy	940,290	\$0.90	\$/MWh	846,261
Aug-2011	Gas Turbine - Peak Load MegaWatt Hours	1,574	\$20.13	\$/MWh	31,685
Aug-2011	Gas Turbine - Peak Load MegaWatt Hours	92	\$49.29	\$/MWh	4,535
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	10,287	\$8.69	\$/MWh	89,394
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,362	\$10.43	\$/MWh	35,066
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	715	\$9.79	\$/MWh	7,000
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,534	\$16.43	\$/MWh	58,064
Aug-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	490	\$16.43	\$/MWh	8,051
Aug-2011	Swaps above threshold	N/A	N/A	N/A	9,975
Aug-2011	Incentive	N/A	N/A	N/A	219,018

**Present Rates Period 1**

National Grid Generation, LLC  
Docket No. \_\_\_\_\_  
Statement BH  
Period I  
2 of 2

MONTH	PRODUCT NAME	TRANSACTION QUANTITY	PRICE	UNITS	TOTAL TRANSACTION CHARGE
Sep-2011	Capacity	N/A	36,770,816.82	Flat Rate	36,770,817
Sep-2011	Energy	763,528	\$0.90	\$/MWh	687,175
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	550	\$20.13	\$/MWh	11,072
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	584	\$26.07	\$/MWh	15,225
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	17	\$49.29	\$/MWh	838
Sep-2011	Gas Turbine - Peak Load MegaWatt Hours	377	\$11.61	\$/MWh	4,377
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	544	\$6.71	\$/MWh	3,651
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	12,352	\$8.69	\$/MWh	107,339
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,531	\$10.43	\$/MWh	15,968
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	627	\$9.79	\$/MWh	6,138
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	3,066	\$16.43	\$/MWh	50,374
Sep-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,252	\$16.43	\$/MWh	20,570
Sep-2011	Start-ups above threshold	N/A	N/A	N/A	18,750
Sep-2011	Swaps above threshold	N/A	N/A	N/A	10,865
Sep-2011	Incentive	N/A	N/A	N/A	126,551
Oct-2011	Capacity	N/A	36,770,816.82	Flat Rate	36,770,817
Oct-2011	Energy	444,351	\$0.90	\$/MWh	399,916
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	309	\$20.13	\$/MWh	6,220
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	32	\$49.29	\$/MWh	1,577
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	204	\$18.30	\$/MWh	3,733
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	85	\$33.18	\$/MWh	2,820
Oct-2011	Gas Turbine - Peak Load MegaWatt Hours	223	\$11.61	\$/MWh	2,589
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,248	\$6.71	\$/MWh	8,374
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	11,871	\$8.69	\$/MWh	103,159
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	289	\$10.43	\$/MWh	3,014
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	31	\$9.79	\$/MWh	303
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	2,210	\$16.43	\$/MWh	36,310
Oct-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	63	\$16.43	\$/MWh	1,035
Oct-2011	Start-ups above threshold	N/A	N/A	N/A	62,500
Oct-2011	Swaps above threshold	N/A	N/A	N/A	5,640
Oct-2011	Incentive	N/A	N/A	N/A	2,129,772
Nov-2011	Capacity	N/A	36,760,602.57	Flat Rate	36,760,603
Nov-2011	Energy	480,113	\$0.90	\$/MWh	432,102
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	36	\$31.29	\$/MWh	1,126
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	23	\$49.29	\$/MWh	1,134
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	62	\$18.30	\$/MWh	1,135
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	51	\$33.18	\$/MWh	1,692
Nov-2011	Gas Turbine - Peak Load MegaWatt Hours	589	\$11.61	\$/MWh	6,838
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	130	\$6.71	\$/MWh	872
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,852	\$8.69	\$/MWh	42,164
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	95	\$10.43	\$/MWh	991
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	42	\$9.79	\$/MWh	411
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,171	\$16.43	\$/MWh	19,240
Nov-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	186	\$16.43	\$/MWh	3,056
Nov-2011	Start-ups above threshold	N/A	N/A	N/A	106,500
Nov-2011	Swaps above threshold	N/A	N/A	N/A	1,410
Nov-2011	Incentive	N/A	N/A	N/A	650,960
Dec-2011	Capacity	N/A	31,462,847.79	Flat Rate	31,462,848
Dec-2011	Energy	407,609	\$0.90	\$/MWh	366,848
Dec-2011	Gas Turbine - Peak Load MegaWatt Hours	16	\$49.29	\$/MWh	789
Dec-2011	Gas Turbine - Peak Load MegaWatt Hours	227	\$11.61	\$/MWh	2,635
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	1,110	\$6.71	\$/MWh	7,448
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	4,097	\$8.69	\$/MWh	35,603
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	50	\$10.43	\$/MWh	522
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	29	\$9.79	\$/MWh	284
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	232	\$16.43	\$/MWh	3,812
Dec-2011	Gas Turbine - Base Load MegaWatt Hours Above Threshold	48	\$16.43	\$/MWh	789
Dec-2011	Start-ups above threshold	N/A	N/A	N/A	91,750
Dec-2011	Incentive	N/A	N/A	N/A	(693)

Total Revenue 445,989,218

ATTACHMENT B

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

NATIONAL GRID GENERATION LLC )

ER13-\_\_-000

ATTESTATION OF JAMES FLANNERY

I, James Flannery, Vice President Generation Operations, of National Grid USA, Inc., do hereby swear and attest that, to the best of my knowledge, information and belief, the cost of service statements and supporting data submitted by NGG as part of its March 2013 filing with the Federal Energy Regulatory Commission of an Amended and Restated Power Supply Agreement between National Grid and Long Island Lighting Company d/b/a LIPA are true, accurate, and current representations of National Grid Generation LLC's books, accounting records and other corporate documents.

James P. Flannery

Subscribed and sworn before me  
this 22 day of March, 2013

Camela B. Smith  
Notary Public

## ATTACHMENT C

### LIST OF RECIPIENTS

#### **For the New York Public Service Commission:**

Hon. Jeffrey Cohen  
Acting Secretary to the Commission  
New York State Public Service Commission  
Agency Building 3  
Albany, NY 12223-1350  
Phone: (518) 474-6530  
Fax: (518) 486-6081  
E-mail: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

#### **For the Long Island Power Authority:**

Lynda Nicolino  
General Counsel and Secretary  
Long Island Power Authority  
333 Earle Ovington Blvd.  
Uniondale, NY 11553

Jacqueline Hardy  
Assistant General Counsel  
Long Island Power Authority  
333 Earle Ovington Blvd.  
Uniondale, NY 11553

David P. Yaffe, Esq.  
Van Ness Feldman P.C.  
1050 Thomas Jefferson St., N.W.  
Suite 700  
Washington, DC 20007