


Town of Colchester Interoffice Memorandum

To: Stan Soby, First Selectman
From: James Paggioli, L.S., Director of Public Works 
CC:
Date: December 29, 2014
Re: Electricity Procurement Recommendation

Over the past several months I have been researching the wholesale market for Electricity Suppliers for the Town of Colchester and Board of Education Facilities with the assistance of Chris Jordan of DelMac Consulting. The primary criteria for the procurement was the availability of an electric supplier to provide a fixed price contract for an extended period (not less than 24 months, 36 months preferred) without any pass through charges. With the existing retail market subject to supplier costs ranging from 9.59 ¢/kWh (short term) to 12.65¢/kWh for a 24 month fixed term, the availability to access the whole sale market is critical for potential savings of long term electrical providers. All electrical accounts were offered in total or separate in order to maximize potential savings.

The initial solicitation was sent to all providers of wholesale electrical supply that serve the ISO New England grid. Many suppliers were unwilling to commit to a fixed price for a 24 or 36 month term. Half were willing to conduct real time (day ahead or spot market) proposals. Of the respondents, three were willing to provide pricing for the requirements of the Town. They were: Consolidated Edison (Con Ed); TransCanada Power Marketing (TransCanada); and Aequitas. Aequitas preferred to quote smaller accounts within our portfolio, while ConEd and TransCanada preferred to quote the entire portfolio.

Monitoring of the trending of rates over the last month and half, industry trends has consistently shown that TransCanada has provided the least expensive fixed rate per kWh and has offered terms that are most favorable for the Town to pursue. In particular is that TransCanada 1) allows for an expansion of 20% more usage without and change in rate, 2) assumes all responsibility for any Material and/or Regulatory Change that may occur during the contract period, and 3) produces power that would be in accordance with the State of Connecticut's goal of percentage of renewable energy.

During the monitoring process, the kWh charge for a three year fixed contract has started at 9.79¢/kWh (11/23/14) and has decreased to 7.92 ¢/kwh for a 36 month term starting in January 2015 and lasting until January 2018. This would represent the lowest fixed cost per kWh that the Town of Colchester has paid in several years.

I have attached a sample contract and have reviewed such with regard to the language. Many of the paragraphs are not applicable to the agreement that would be made between TransCanada and the Town due to the Condition Sheet that would be attached to the contract (Confidential Price Proposals- also attached), and that the proposals/contract is a fixed rate for the term of the contract.

Included also is the price proposal history from the three vendors with the detailed day by day drop in rate proposal from TransCanada. There is no direct cost to the Town for the consulting services provided by DelMac Consulting, with their fees being paid for by the electrical suppliers exclusively.

At this point I would recommend that the Town enter into a contract with TransCanada Power Marketing, Ltd. to be the Electrical supplier for the Town of Colchester and Colchester School District facilities for a 3 year term beginning in January of 2015 and continuing until January of 2018, incorporating the daily Confidential Price Proposal into the contract with the associated Conditions and that the First Selectman be authorized to sign any necessary documents as applicable.

Proposed Motion: That the Town of Colchester enter into a contract with TransCanada Power Marketing, Ltd. to be the Electrical supplier for the Town of Colchester and Colchester School District facilities for a 3 year term beginning in January of 2015 and continuing until January of 2018, incorporating the daily Confidential Price Proposal into the contract with the associated Conditions and that the First Selectman be authorized to sign any necessary documents as applicable.

November 2014

Town of Colchester - Generation Service Price Comparisons

Company	Term			Winter Reliability	Volume Limits
	12	24	36		
ConEd		10.75	10.75	Included	None
TCMP		10.075/9.915	9.885/9.79	Pass Throught	+20%
NextEra		?	?		
Aequitas (1)		10.99		Pass Through	None

CL&P Rate	Dec '14		Jan-June	
	Pk	OffPk	Pk	OffPk
56	12.03	9.03	14.273	11.273
35	9.917	9.917	12.139	12.139
30	9.917	9.917	12.139	12.139
115	9.917	9.917	12.139	12.139

Note

1 Aequitas Energy price for small accounts Rate 30 and 115

TransCanada

CONDITIONS

Prices may be updated at TransCanada's discretion.

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

CONFIDENTIAL

- All-in Fixed and Capacity Pass-through prices starting December 2014.
 - Terms of 12, 24, and 36 months, please note the Sweet Spot term of 24 months which is the lowest between 12 and 24 months.
 - Full (100%) swing.
 - Prices include no fee for DelMar Consulting. Please be sure to add that fee before showing prices to the customer and then let us know what that fee is.
 - Credit is pending and we will let you know the outcome of that review. Dual billing is assumed in these prices. If need be we can price this customer as single utility billing by including CT PORK and Winter Reliability costs and include those costs for doing so.
 - Winter Reliability costs are not included and will not be passed through.
 - Net Payment terms are 25 days for dual billing.
- Please note the benefits of electing to purchase our proposed supply arrangement:**
- No hidden fees or charges; prices are all-in fixed with no pass-through charges (except as expressly noted in our pricing section).
 - Our agreement is extremely customer friendly in comparison to others in the industry.
 - The proposal and agreement allow for 100% (full) swing compared to historical usage.
 - We allow for 25 day net payment terms.
 - You have the commitment of ConEd Solutions to fulfill (enroll/bill) the transaction correctly through a dedicated Account Manager, and, the strong financial backing and security of our corporate parent Consolidated Edison, Inc.



TransCanada
In business to deliver

TransCanada Power
Marketing Ltd.
Price Proposal
*****CONFIDENTIAL*****

110 Turnpike Road - Suite 300
Westborough, MA 01581

DATE 11/26/2014

CUSTOMER Colchester

CURRENT PRICE

TRANSCANADA CONTACT Jeff Gordon
Retail Power Marketer
508-475-6760

PRICING

Fixed, capacity pass thru

Start Term	End Term	Term Length	Price in ¢/kwh
December-14	December-16	24	9.080
December-14	December-17	36	8.790
January-15	January-17	24	8.980
January-15	January-18	36	8.710

Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers.

www.transcanada.com/disclosurelabels.html


CONDITIONS

Prices may be updated at TransCanada's discretion.

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

Retail Price Proposal 12-4-2014.xls


Sign In

 TransCanada <i>In business to deliver</i>		TransCanada Power Marketing Ltd. Price Proposal *****CONFIDENTIAL*****		
110 Turnpike Road - Suite 300 Westborough, MA 01581				
DATE	12/4/2014			
CUSTOMER	Colchester			
CURRENT PRICE				
TRANSCANADA CONTACT	Jeff Gordon Retail Power Marketer 508-475-6760			
PRICING				
Fixed, capacity pass thru				
	Start Term	End Term	Term Length	Price in ¢/kwh
	December-14	December-16	24	8.845
	December-14	December-17	36	8.630
	January-15	January-17	24	8.760
	January-15	January-18	36	8.595
Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers. www.transcanada.com/disclosurelabels.html				
CONDITIONS				
Prices may be updated at TransCanada's discretion.				

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS: Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

Retail Price Proposal 12-8-2014.xls

Sign In

 TransCanada <i>In business to deliver</i>		TransCanada Power Marketing Ltd. Price Proposal *****CONFIDENTIAL*****		
110 Turnpike Road - Suite 300 Westborough, MA 01581				
DATE	12/8/2014			
CUSTOMER	Colchester			
CURRENT PRICE				
TRANSCANADA CONTACT	Jeff Gordon Retail Power Marketer 508-475-6760			
PRICING				
Fixed, capacity pass thru				
	Start Term	End Term	Term Length	Price in \$/kwh
	December-14	December-16	24	8.910
	December-14	December-17	36	8.640
	January-15	January-17	24	8.815
	January-15	January-18	36	8.560
Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers. www.transcanada.com/disclosurelabels.html				
CONDITIONS				
Prices may be updated at TransCanada's discretion.				

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 **CREDIT STATUS** Approved
- 4 **PAYMENT TERMS:** 20 Days
- 5 **BILLING METHOD:** Dual
- 6 **BANDWIDTH:** 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term



TransCanada
In business to deliver

TransCanada Power
 Marketing Ltd.
 Price Proposal
 *****CONFIDENTIAL*****

110 Turnpike Road - Suite 300
 Westborough, MA 01581

DATE 12/10/2014

CUSTOMER Colchester

CURRENT PRICE

TRANSCANADA Jeff Gordon
 CONTACT Retail Power Marketer
 508-475-6760

PRICING

Fixed, capacity pass thru

Start Term	End Term	Term Length	Price in ¢/kwh
December-14	December-16	24	8.900
December-14	December-17	36	8.625
January-15	January-17	24	8.795
January-15	January-18	36	8.545

Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers.

www.transcanada.com/disclosurelabels.html


CONDITIONS

Prices may be updated at TransCanada's discretion.

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

Retail Price Proposal 12-15-2014.xls

Sign In

 TransCanada <i>In business to deliver</i>		TransCanada Power Marketing Ltd. Price Proposal *****CONFIDENTIAL*****	
110 Turnpike Road - Suite 300 Westborough, MA 01581			
DATE	12/15/2014		
CUSTOMER	Colchester		
CURRENT PRICE			
TRANSCANADA CONTACT	Jeff Gordon Retail Power Marketer 508-475-6760		
PRICING	Fixed, capacity pass thru		
	Start Term	End Term	Term Length
	January-15	January-17	24
	January-15	January-18	36
			Price in ¢/kwh
			8.925
			8.630
Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers. www.transcanada.com/disclosurelabels.html			
CONDITIONS			
Prices may be updated at TransCanada's discretion.			

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS: Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term



TransCanada
In business to deliver

TransCanada Power
 Marketing Ltd.
 Price Proposal
 *****CONFIDENTIAL*****

110 Turnpike Road - Suite 300
 Westborough, MA 01581

DATE 12/18/2014
CUSTOMER Colchester
CURRENT PRICE
TRANSCANADA CONTACT Jeff Gordon
 Retail Power Marketer
 508-475-6760

PRICING

Fixed, capacity pass thru

Start Term	End Term	Term Length	Price in ¢/kwh
January-15	January-17	24	8.740
January-15	January-18	36	8.505

Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers.

www.transcanada.com/disclosurelabels.html


CONDITIONS

Prices may be updated at TransCanada's discretion.

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

Retail Price Proposal 12-22-2014.xls

Sign In

 TransCanada <i>In business to deliver</i>		TransCanada Power Marketing Ltd. Price Proposal *****CONFIDENTIAL*****	
110 Turnpike Road - Suite 300 Westborough, MA 01581			
DATE	12/22/2014		
CUSTOMER	Colchester		
CURRENT PRICE			
TRANSCANADA CONTACT	Jeff Gordon Retail Power Marketer 503-475-8760		
PRICING	Fixed, capacity pass thru		
	Start Term	End Term	Term Length
	January-15	January-17	24
	January-15	January-18	56
			Price in \$/Mwh
			8.590
			8.375
Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers. www.transcanada.com/disclosurelabel.html			
CONDITIONS			
Prices may be updated at TransCanada's discretion.			
1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.			

2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
3 CREDIT STATUS: Approved
4 PAYMENT TERMS: 20 Days
5 BILLING METHOD: Dual
6 BANDWIDTH: 20% upside
7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

TIMCO RECOMMENDATION 12/23/14



TransCanada Power
Marketing Ltd.
Price Proposal
*****CONFIDENTIAL*****

110 Turnpike Road - Suite 300
Westborough, MA 01581

DATE 12/23/2014
CUSTOMER Colchester
CURRENT PRICE
TRANSCANADA CONTACT Jeff Gordon
Retail Power Marketer
508-475-6760
PRICING

Fixed, capacity pass thru

Start Term	End Term	Term Length	Price in ¢/kwh
January-15	January-17	24	8.280
January-15	January-18	36	8.155

Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers.

www.transcanada.com/disclosurelabels.html

CONDITIONS


Prices may be updated at TransCanada's discretion.

- 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.
- 2 Buyer understands that by accepting this fixed price proposal, Buyer is obligated to pay the contract price for the full term of the contract even though market conditions may change over the term, which could cause forward prices to fall.
- 3 CREDIT STATUS Approved
- 4 PAYMENT TERMS: 20 Days
- 5 BILLING METHOD: Dual
- 6 BANDWIDTH: 20% upside
- 7 TransCanada assumes risk for any Material and/or Regulatory changes occurring during contract term

SOLID!

Retail Price Proposal 12-29-2014_rev1.xls

Sign In

 TransCanada <i>In business to deliver</i>		TransCanada Power Marketing Ltd. Price Proposal *****CONFIDENTIAL*****	
110 Turnpike Road - Suite 300 Westborough, MA 01581			
DATE	12/29/2014		
CUSTOMER	Colchester		
CURRENT PRICE	Jeff Gordon Retail Power Marketer 508-475-6790		
TRANSCANADA CONTACT			
PRICING			
Fixed, capacity pass thru			
Start Term	End Term	Term Length	Price in c/kwh
January-15	January-17	24	7.965
January-15	January-18	36	7.920
Please Note: TransCanada's disclosure label includes a Hydro mix from its owned and operated hydroelectric stations located along the Connecticut and Deerfield Rivers. www.transcanada.com/disclosurelabel.html			
CONDITIONS			
Prices may be updated at TransCanada's discretion. 1 In accordance with industry practice, TransCanada reserves the right to modify or withdraw this proposal at any time prior to the execution of a mutually acceptable supply contract and credit approval.			

**POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS**

This Agreement is made and entered into between TransCanada Power Marketing Ltd. ("TransCanada") and Town of Colchester ("Buyer") on this day November 26, 2014 (the "Effective Date").

Whereas, TransCanada is interested in selling and Buyer is interested in purchasing Electrical Supply (as defined below) and Green-e RECs, as applicable;

Whereas, the sale of Electrical Supply and Green-e RECs, as applicable, from TransCanada to Buyer under this Agreement shall be subject to the terms of this Agreement. The details of such sale shall be as stated in any Confirmation entered into between Buyer and TransCanada.

In consideration of the premises and mutual covenants contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged), Buyer and TransCanada agree as follows:

Article 1 - Interpretation

1.1 Scope and Purpose

These Terms and Conditions are intended to facilitate transactions between TransCanada and Buyer for the sale and purchase of Electrical Supply and Green-e RECs as applicable. All Transactions are entered into in reliance on the fact that these Terms and Conditions and all Confirmations form a single agreement between the Parties and each Confirmation shall incorporate and be subject to these Terms and Conditions, except to the extent expressly stated in any Confirmation. In the event of a conflict among these Terms and Conditions and any Confirmation, the terms shall govern in the following order: (i) the Confirmation, (ii) the Terms and Conditions.

1.2 Definitions

The following words and phrases have the following meanings unless otherwise stated in this Agreement. Capitalized terms which are not defined in this Agreement shall have the same meaning given to such terms in ISO-NE Rules, or such successor document that defines such terms.

- (a) "Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, that Person. For the purpose of this definition, "control" means the direct or indirect ownership of more than 50% of the outstanding capital stock or other equity interests having ordinary voting power.
- (b) "Agreement" means the legally binding contract between the Parties for the purchase and sale of Electrical Supply and incorporates by reference these Terms and Conditions, any and all binding Confirmations, and any schedules and written amendments thereto.
- (c) "Average Hourly Energy Price" means weighted average (weighted in accordance with the account hourly usage or Transmitting Utility rate class usage profile) of hourly ISO New England Day Ahead Locational Marginal Price for the Buyer's Load Zone plus all charges arising from uplifts, ancillary services, reserves, losses, congestion, and other ISO New England charges or fees incurred by TransCanada in connection with the provision of Energy.
- (d) "Billing Cycle" means the periodic meter reading schedule used by the Transmitting Utility.
- (e) "Business Day" means any calendar day starting at 0800 hours and finishing at 1700 hours as measured in Boston, Massachusetts, excluding Saturdays, Sundays and United States federal statutory holidays.
- (f) "Buyer's Capacity Obligation" means the monthly forward capacity market obligation or locational forward capacity market obligation as applicable and each as defined in ISO-NE Rules, imposed on TransCanada as a result of TransCanada's obligation to supply the Electrical Supply to Buyer under the Agreement as measured and expressed in kilowatts (kW).
- (g) "Buyer's Load Zone" means the load zone(s) in which Buyer's Service Point(s) are located as detailed in any Confirmation.
- (h) "Capacity Allowance" means the maximum quantity of Buyer's Capacity Obligation that TransCanada shall supply Buyer at the Contract Price during the Supply Term, as set out in any Confirmation.
- (i) "Capacity Market Price" means the ISO New England Net Regional Clearing Price, or any other price for capacity calculated under any subsequent capacity payment mechanism, as defined in ISO-NE Rules.
- (j) "Confirmation(s)" means a written document, in the form attached to these Terms and Conditions as Appendix A, setting forth the terms of a Transaction.
- (k) "Contract Price" means the price, expressed in ¢/kWh, to be paid by Buyer to TransCanada for Electrical Supply (up to the Contract Quantity) and Green-e RECs, as applicable, (for the Green-e Contract Quantity), purchased under this Agreement as set out in any Confirmation.
- (l) "Contract Quantity" means the maximum quantity of Energy that TransCanada agrees to sell to Buyer at the Contract Price each Billing Cycle during any Supply Term, as set out in any Confirmation.
- (m) "Credit Rating" means the senior unsecured credit rating (without third party enhancements) issued to Buyer by any Credit Rating Agency. If Buyer is rated by more than one Credit Rating Agency the lower of Buyer's ratings shall prevail.
- (n) "Credit Rating Agency" means Standard & Poor's a division of the McGraw-Hill Companies, Inc. or Moody's Investor Service, Inc. or Fitch Ratings Ltd.
- (o) "Delivery Point" means the Buyer's Load Zone.
- (p) "Electrical Supply" means the entirety of the electrical requirements at the Service Point(s), including Energy, Buyer's Capacity Obligation, associated reserves, regulation service, and other ancillary services.
- (q) "Energy" means the actual metered electrical energy (expressed in kilowatt hours (kWh)) delivered by the Transmitting Utility to, and purchased by Buyer from TransCanada at, the Service Point(s) under the terms of this Agreement.
- (r) "Force Majeure" means an event, condition, occurrence or circumstance beyond the reasonable control and without the fault or negligence of the Party claiming the Force Majeure, which, despite all reasonable efforts at a reasonable cost of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay money due) imposed on that Party under this Agreement, including, but not limited to, flood, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes; epidemic; war; riot; civil disobedience; labor dispute; sabotage; restraint order by court or public authority; acts of God or public enemies; failure, malfunction or outage of transmission facilities and actions of a Transmitting Utility, independent system operator or power pool; or inability to obtain or retain the necessary authorisations or approvals from any governmental authority, which by exercise of due diligence the Party has been, or would be, unable to overcome. Notwithstanding the foregoing, Force Majeure shall not include a failure or inability to perform or comply with any of the covenants or obligations imposed upon it under this Agreement that: (a) was caused by its own negligence or failure to remedy that negligence within a reasonable time; (b) was caused by lack of funds or other financial problems affecting the Party claiming Force Majeure; (c) was caused by a failure to use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply with such covenants or obligations; or (d) would result in an economic hardship for the Party.
- (s) "Generation Allowance" means the permitted allowance for New On-Site Generation as set forth in any Confirmation.
- (t) "Green-e Contract Quantity" means the quantity of Green-e RECs that TransCanada agrees to sell to Buyer during the Supply Term, as set out in a Confirmation.

**POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS**

- (u) "Green-e Energy" means the independent consumer protection program for the sale of renewable energy and greenhouse gas reductions in the retail market. Green-e offers certification and verification of renewable energy and greenhouse gas mitigation products. It is a program of the non-profit Center for Resource Solutions.
 - (v) "Green-e National Standard" means the Green-e Energy National Standard version 2.1, or its successor, as administrated by the Center for Resource Solutions.
 - (w) "Green-e REC" means a Green-e Renewable Energy Certificate as certified by the Center for Resource Solutions, which represents all the renewable attributes associated with one (1) MWh of generation from a renewable energy facility that meets the requirements of the Green-e National Standard, and shall include but not be limited to all renewable attributes associated with (i) 1 MWh of electricity generation during the Period of Production, and (ii) the avoidance of the emission of any gas, chemical, particulate or substance into the air, soil or water.
 - (x) "Insolvency Event" means, in relation to any Party, the occurrence of one or more of the following:
 - (i) an order is made or an effective resolution passed for the winding-up, liquidation or dissolution of the Party;
 - (ii) the Party institutes proceedings for its winding up, liquidation or dissolution, or takes action to become a voluntary bankrupt, or consents to the filing of a bankruptcy proceeding against it, or files a proposal, a notice of intention to make a proposal, a petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other similar applicable law or consents to the filing of any such petition, or consents to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the property of the Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy, or suspends or threatens to suspend transaction of its usual business, or any action is taken by the Party in furtherance of any of the aforesaid;
 - (iii) a court having jurisdiction enters a decree or order adjudging the Party a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy law or any other similar applicable law, or a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of the Party, or for the winding up, dissolution or liquidation of its affairs, is entered and the decree, order or petition is not contested and the effect of it stayed, or any material part of the property of the Party is sequestered or attached and is not returned to the possession of the Party or released from such attachment within 20 days thereafter;
 - (iv) any proceedings, voluntary or involuntary, are commenced, or an order or petition is issued, respecting the Party pursuant to any applicable law relating to bankruptcy, insolvency, reorganization of debts, liquidation, winding-up or dissolution;
 - (v) the Party causes or institutes any proceeding for its dissolution or termination; or
 - (vi) the Party is generally not paying its debts as they become due or makes a general assignment for the benefit of creditors.
 - (y) "ISO-NE Rules" means the ISO New England System Rules, as that term is defined in ISO New England Market Rule 1, on file with the Federal Energy Regulatory Commission and as revised and superseded from time to time.
 - (z) "Investment Grade" means BBB- if rated by either Standard & Poor's, a division of McGraw-Hill Companies, Inc. or Fitch Ratings, Ltd. or Baa3 if rated by Moody's Investor Service, Inc.
 - (aa) "Liquidation Quantity" means the quantity of Electrical Supply anticipated to be provided by TransCanada and purchased by the Buyer over the remainder of all the Supply Terms. Notwithstanding that Buyer is not obliged to purchase a fixed quantity of Electrical Supply under this Agreement, the Parties agree that the Liquidation Quantity shall be calculated using Buyer's most recent two-year average historical Electrical Supply usage for the same month applicable to the remainder of the all Transactions. In the event that such two years of historical Electrical Supply data is not available, the Liquidation Quantity shall be determined based upon available historical Electrical Supply data.
 - (bb) "Net Consumption Minimum" means, following the reduction of Energy consumption as a result of New On-Site Generation, the minimum Energy consumption under any Transaction as such amount is set forth in each Confirmation.
 - (cc) "Party" means either Buyer or TransCanada, and "Parties" means both Buyer and TransCanada.
 - (dd) "Payment Term" means the number days, as set out in the Confirmation, after the invoice generation date after which daily interest charges will begin to accrue if payment is not first received by TransCanada.
 - (ee) "Performance Assurance" means:
 - (i) collateral, in the form of either cash, a guarantee, an increase in the amount of a guarantee currently held by TransCanada guaranteeing Buyer's obligations under this Agreement, letter(s) of credit, or other security, in an amount acceptable to TransCanada;
 - (ii) TransCanada requiring pre-payment from Buyer for deliveries under any Transaction, with terms to be determined by TransCanada in its sole discretion; or
 - (iii) TransCanada requiring an accelerated payment schedule with terms to be determined by TransCanada in its sole discretion.
 - (ff) "Period of Production" means the period during which the Green-e RECs are generated.
 - (gg) "Person" means an individual, partnership, association, or body corporate, as the case may be.
 - (hh) "Prime Rate" means the base rate on corporate loans posted by at least 75% of the nation's largest banks as published from time to time under "Money Rates" by The Wall Street Journal.
 - (ii) "Service Point" means the retail meters of Buyer's facilities set out in any Confirmation.
 - (jj) "Supplied Energy" means Energy plus distribution line losses as determined by the Transmitting Utility.
 - (kk) "Supply Term" means the term of a Transaction, as specified under any Confirmation.
 - (ll) "Taxes" means all ad valorem, property, occupation, utility, gross receipts, sales, use, excise and other taxes, governmental charges, licenses, permits and assessments.
 - (mm) "TC Green" is the program name registered with Green-e Energy under which TransCanada buys and sells Green-e RECs.
 - (nn) "Term" means the term of this Agreement as stated in Section 2.1 of the Terms and Conditions.
 - (oo) "Terms and Conditions" means these Terms and Conditions attached to and forming part of the Agreement.
 - (pp) "Transaction" means any sale of Electrical Supply from TransCanada to Buyer pursuant to this Agreement, as specified in a Confirmation.
 - (qq) "Transmitting Utility" means any utility or utilities providing services for the delivery of the Electrical Supply from the Delivery Point to the Service Point(s) under any Transaction.
- 1.3 Governing Law**
This Agreement is to be construed and enforced in accordance with the laws of the State of Connecticut and the federal laws of the United States of America applicable in the State of Connecticut and is to be treated in all respects as a Connecticut contract. To the extent that there is any change in any such laws which renders any provision of this Agreement illegal or unenforceable because of any such change in law(s), or should this Agreement fail to include a provision that is required as a matter of

POWER PURCHASE AGREEMENT TERMS AND CONDITIONS

law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by law.

The Parties irrevocably consent and submit to the exclusive jurisdiction of the federal courts in the State of Connecticut, if federal court shall not have jurisdiction, state court in the State of Connecticut with respect to all matters relating to this Agreement. Each Party waives any objection that it may now or hereafter have to the determination of the venue for any proceeding relating to this Agreement that such court(s) is an inconvenient forum.

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING HERETO OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

1.4 Severability

Subject to Section 1.3, if any one or more terms or provisions of this Agreement is found to be illegal or unenforceable for any reason, those terms and provisions or portion of them that are determined to be illegal or unenforceable are deleted from this Agreement, and the remaining terms and provisions continue in full force and effect as if the offending terms and provisions were never made a part of this Agreement.

1.5 Headings

The headings and divisions of this Agreement into Articles and Sections are for convenience of reference only and in no way affect the meaning or interpretation of this Agreement. Unless otherwise stated, all references to Sections in this Agreement shall refer to Sections in the Terms and Conditions.

Article 2 - Term

2.1 Term

This Agreement shall remain in effect until TransCanada and Buyer have fulfilled all their obligations with respect to each and every Transaction entered into, from time to time, under this Agreement. The expiry of the Supply Term of any Transaction shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such expiration. Upon the fulfillment of all obligations by the Parties with respect to such Transactions, either Party may terminate this Agreement upon thirty (30) days prior written notice.

Article 3 - Electrical Supply

3.1 Electrical Supply

Pursuant to a Confirmation, TransCanada shall sell, and Buyer shall purchase, the Electrical Supply in accordance with the terms of this Agreement. The electrical requirements at the Service Points are determinative of Electrical Supply and not the particular meter or account number identifying the Service Point. Meter changes, account number changes, retrofits, or remodels shall not relieve TransCanada's obligation to sell or Buyer's obligation to purchase under this Agreement. Notwithstanding anything to the contrary herein, TransCanada shall not be obligated to physically deliver the Electrical Supply from the Delivery Point to the Service Point(s) and Buyer acknowledges that such responsibility shall be borne by the Transmitting Utility. Buyer shall be responsible for any charges for transmission and distribution services imposed on Buyer by the Transmitting Utility.

3.2 Purchase Quantities

Notwithstanding anything to the contrary in this Agreement, Buyer is not obligated to purchase a fixed quantity of Electrical Supply under this Agreement. Buyer expressly acknowledges, however, that Buyer shall be obligated to purchase from TransCanada all Electrical Supply consumed at the Service Point(s) as referenced in any Confirmation under this Agreement for the entirety of any Supply Term. The Contract Quantity establishes a purchase allowance approximately 20 percent above Buyer's

historic usage levels under which Buyer may purchase Electrical Supply at the Contract Price.

3.3 New On-Site Generation

(a) Without incurring any additional charges hereunder, Buyer may install electric generation facilities that reduce the Energy at the Service Point(s) of any of Buyer's facilities set out in any Confirmation (individually and collectively, "New On-Site Generation") provided that the New On-Site Generation does not have the installed capability to reduce the monthly Energy more than the Generation Allowance set out in any Confirmation.

(b) Buyer may request TransCanada's prior written consent to increase the Generation Allowance set out in any Confirmation in order to accommodate larger levels of New On-Site Generation. Buyer shall provide notice for TransCanada's consent under this subsection no less than four months prior to the anticipated commercial operation date of the New On-Site Generation. TransCanada may withhold its consent under this subsection in its sole discretion.

Article 4 - Charges for Electrical Supply

4.1 Charges for Electrical Supply

(a) For the sale of Electrical Supply, Buyer agrees to pay to TransCanada, in accordance with the terms of this Agreement, all applicable amounts under Sections 4.2 through 4.7 and any Taxes under Section 6.2.

(b) Buyer shall not be liable to TransCanada for any new or increased fees or costs imposed on TransCanada for the delivery of Electrical Supply under this Agreement as a consequence of a change in law, regulation, the Transmission, Market and Services Tariff, ISO-NE Rules, or a change in application or interpretation thereof occurring after the date of any Confirmation, with the exception of any new or increased Taxes, fees and other charges levied on Buyer, any new or increased Gross Receipts Tax levied on TransCanada.

4.2 Charges for Electrical Supply up to the Contract Quantity

Buyer shall pay to TransCanada the Contract Price multiplied by the Energy up to the monthly Contract Quantity.

4.3 Charges for Electrical Supply in excess of Contract Quantity

For incremental quantities of monthly Energy in excess of the monthly Contract Quantity, Buyer shall pay to TransCanada an amount equal to the corresponding incremental quantity of Supplied Energy multiplied by the greater of the Contract Price or the Average Hourly Energy Price.

4.4 Charges for Excess Capacity Obligation

For any month in which incremental quantities of Buyer's Capacity Obligation exceed the Capacity Allowance (the "Excess Capacity Obligation"), Buyer shall pay to TransCanada an amount equal to the Excess Capacity Obligation multiplied by the monthly Capacity Market Price. This Section 4.4 is not applicable if Buyer is responsible for Capacity Charges pursuant to Section 4.6 and as specifically referenced in a Confirmation executed under this Agreement.

4.5 Charges for Consumption below Net Consumption Minimum Resulting from New On-Site Generation

If, after the commercial operation date of New On-Site Generation, (i) the New On-Site Generation has the installed capability to reduce the Energy in excess of the Generation Allowance, and (ii) the aggregate Energy of Buyer falls below the Net Consumption Minimum as set out in any Confirmation, then Buyer may be subject to charges equal to [the Net Consumption Minimum less the quantity of Energy for the month] multiplied by [the Contract Price, less the average of the New England hourly Real-Time Locational Marginal Prices for Buyer's Load Zone for the month, less any ancillary costs avoided by TransCanada, plus any incremental capacity costs not recovered by TransCanada in Section 4.6] (The "Mitigated Contract Price"), when the "Mitigated Contract Price" is greater than zero.

4.6 Charges for Capacity

Buyer shall pay TransCanada the product of the Buyer's Capacity Obligation and the Capacity Market Price. This Section 4.6 is applicable only if specifically referenced in a Confirmation executed under this Agreement.

POWER PURCHASE AGREEMENT TERMS AND CONDITIONS

4.7 Charges for Congestion

Buyer shall pay all Congestion Costs, where Congestion Cost means the positive average of the difference in hourly Day-Ahead Locational Marginal Prices between the Buyer's Load Zone and the New England Hub over a Billing Cycle multiplied by the quantity of Supplied Energy consumed by the Buyer over the same Billing Cycle. This Section 4.7 is applicable only if specifically referenced in a Confirmation executed under this Agreement.

4.8 Charges for Daily RMR

Buyer shall pay all Daily RMR costs, where Daily RMR Cost means the Day-Ahead and Real-Time Local Second Contingency Protection Resource NCPC Charges, as defined in ISO-NE Rules, incurred by TransCanada to serve Buyer. This Section 4.8 is applicable only if specifically referenced in a Confirmation executed under this Agreement.

Article 5 - Performance

5.1 Scheduling and Operations

- (a) TransCanada shall enroll Buyer's electric accounts (as specified in the Confirmation) with the applicable Transmitting Utility(s) as accounts for which retail service will be provided by TransCanada, and Buyer shall take retail service from TransCanada at the Service Point(s).
- (b) TransCanada is responsible for any costs resulting from the physical loss of energy during the transmission and delivery of Electrical Supply to the Service Point up to the Contract Quantity. For any Transaction in which Section 4.7 is applicable as specifically referenced in a Confirmation executed under this Agreement, then TransCanada will be responsible for any costs resulting from the physical loss of energy during the transmission and delivery of Electrical Supply to the Delivery Point up to the Contract Quantity, and Buyer shall be responsible for any such losses from the Delivery Point to the Service Point.

5.2 Regulatory Arrangements

TransCanada shall maintain its good standing as a Licensed Competitive Supplier ("Supplier") under the state and federal rules and laws applicable in the state(s) where Buyer's Service Point(s) are located in order for it to perform under this Agreement. TransCanada shall provide proof of its standing as a Supplier as requested by the Buyer.

5.3 Independent Contractor

TransCanada is, and will perform as, an independent contractor under this Agreement. Except as otherwise provided in this Agreement, neither Party has the authority to execute documents that purport to bind the other and nothing herein shall be construed to constitute a joint venture, fiduciary relationship, partnership, or other joint undertaking.

Article 6 - Invoicing

6.1 Billing and Payment

- (a) TransCanada is responsible for measuring or arranging with the Transmitting Utility for measurement of Buyer's Capacity Obligation and deliveries of Energy. If it is impractical to obtain the Energy or actual Buyer's Capacity Obligation for billing purposes, TransCanada shall estimate such measurements based upon the Transmitting Utility's estimates or Buyer's historical usage. TransCanada shall adjust any discrepancy between estimated volumes and actual volumes consumed by Buyer in a subsequent invoice.
- (b) When the Billing Method set out in the Confirmation is Dual Billing, then:
- (i) No later than 10 days following the receipt of the information described in Section 6.1(a), TransCanada shall provide to Buyer an invoice setting forth the Electrical Supply sold by TransCanada in the most recently completed Billing Cycle to the Service Point(s) and the total amount payable by Buyer for the Electrical Supply, calculated in accordance with Article 4 of the Terms and Conditions. Except that if Buyer has elected Grouped Billing for any of its Service Points, then TransCanada shall provide Buyer a single invoice on a regular monthly basis setting forth the Electrical Supply sold by

TransCanada to each of the Service Points designated to be grouped together for the most recently completed Billing Cycle for each Service Point and the total amount payable by Buyer for the aggregate Electrical Supply, calculated in accordance with Article 4 of the Terms and Conditions.

- (ii) On or before the payment due date provided on the invoice pursuant to the Payment Term set out in the applicable Confirmation, Buyer shall make payment of the amount invoiced provided however if TransCanada is late in providing an invoice to Buyer, the due date for payment by Buyer shall be extended by the same number of days that TransCanada was late in providing the invoice to Buyer. If the day prescribed for payment is not a Business Day, Buyer shall pay TransCanada no later than the next following Business Day.
- (iii) Overdue payments bear interest until paid at the lower of Prime Rate plus two (2) percent per annum or the highest rate allowed by law. All payments shall be in US dollars.
- (iv) All invoices shall be sent to the address(es) specified in the Confirmation.
- (c) When the Billing Method set out in the Confirmation is Consolidated Billing, then:
- (i) The Buyer shall pay TransCanada through the Transmitting Utility's supplier billing option. Through such consolidated billing, invoicing for Electrical Supply provided under this Agreement shall be included on the Buyer's Transmitting Utility invoice. Payment shall be made in accordance with the Transmitting Utility's tariff and billing procedures. All payment terms in the applicable tariff shall apply. In the event that the Transmitting Utility fails to issue an invoice within twenty (20) days of the completion of the Billing Cycle, TransCanada reserves the right to invoice the Buyer directly for Electrical Supply.
- (ii) The billing period and payment requirements for Electrical Supply will be the same as those used by the Transmitting Utility, as described in the Transmitting Utility's terms and conditions for delivery service.
- (d) If Buyer disputes any portion of TransCanada's charges on an invoice, Buyer shall nevertheless pay the greater of the undisputed amount or an amount equal to 90% of the Energy purchased by the Buyer in the prior Billing Cycle times the applicable Contract Price. Such payment does not prejudice Buyer's right to dispute or question the correctness of the invoice. If applicable, Buyer shall notify TransCanada in writing within thirty (30) days following receipt of an invoice of any dispute or question concerning the correctness of the invoice. The Parties shall attempt to resolve any disputes among themselves provided however if they are unable to resolve such disputes within thirty (30) days of Buyer's notification to TransCanada, either Party may initiate any remedy available to it in law or equity, including but not limited to, for service provided to Service Points located in the Commonwealth of Massachusetts, mediation services available through the Massachusetts Department of Public Utilities pursuant to the Massachusetts General Laws c. 164, § 1F(2) and 220 CMR 11.07(4). Upon resolution of the dispute, any disputed amount that is required to be paid by either Party shall be paid within fifteen (15) days, together with interest thereon at an annual rate of interest equal to the lower of Prime Rate plus two (2) percent per annum or the highest rate allowed by law accruing from the time such amount was due or paid, as appropriate, until it is reimbursed.

6.2 Taxes

TransCanada shall pay or cause to be paid all Taxes (except Rhode Island gross earnings taxes on Service Points located in the state of Rhode Island), fees and other charges lawfully levied on TransCanada, or otherwise to be borne by TransCanada, and applicable to the Electrical Supply prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes, fees and other charges lawfully levied on Buyer, or otherwise to be borne by Buyer, and applicable to the Electrical Supply at and after delivery to the Delivery Point. Any such

POWER PURCHASE AGREEMENT TERMS AND CONDITIONS

taxes, fees and other charges will not form any component of the Contract Price. Notwithstanding the foregoing, TransCanada shall collect, and Buyer shall pay to TransCanada, all applicable sales taxes and Rhode Island gross earnings tax for Service Points located in Rhode Island, where applicable.

Article 7 – Force Majeure

7.1 Force Majeure

If by reason of Force Majeure a Party is not reasonably able to fulfil an obligation, other than an obligation to make a payment in accordance with the terms of this Agreement, then such Party:

- (a) shall, as soon as practicable, notify the other Party of the Force Majeure in writing or orally (confirmed in writing), which notice must provide reasonably full particulars of such Force Majeure;
- (b) is relieved from fulfilling the obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
- (c) shall employ all reasonable commercial means to reduce the consequences of the Force Majeure (however, the foregoing is not to be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labor disturbance);
- (d) shall begin as soon as reasonably possible after the Force Majeure to fulfil or resume fulfilling its obligations under this Agreement;
- (e) shall provide the other Party with prompt notice of the cessation or partial cessation of the Force Majeure; and
- (f) is not responsible or liable to the other Party for any loss or damage that the other party may suffer or incur as a result of the Force Majeure.

Article 8 – Financial Information and Assurances

8.1 Financial Information of Buyer

If TransCanada does not otherwise have access to Buyer's, or Buyer's guarantor's, as applicable, financial statements, Buyer shall provide TransCanada with its or its guarantor's, as applicable, most recent quarterly and/or annual financial statements, audited as applicable, no later than five (5) Business Days after a reasonable request by TransCanada.

8.2 Financial Assurances

If at any time during the Term of this Agreement:

- (a) TransCanada has a reasonable basis to believe that Buyer's creditworthiness or its ability to perform its obligations under any Transaction has become unsatisfactory;
- (b) Buyer fails to provide financial statements in accordance with Section 8.1;
- (c) any Performance Assurance held by TransCanada has, in its reasonable discretion, become unsatisfactory;
- (d) Buyer has, on two or more occasions, remedied a Section 9.1 (e) default within the time provided for under Section 9.2(a) without the prior consent of TransCanada;
- (e) TransCanada's credit insurance provider determines that Buyer shall no longer be covered under its credit insurance policy; or
- (f) If Buyer has a Credit Rating and such Credit Rating is downgraded below Investment Grade by any Credit Rating Agency.

then TransCanada shall be entitled to request that Buyer provide TransCanada with Performance Assurance (including additional or replacement Performance Assurance, as applicable) and Buyer shall have five (5) Business Days from such request to provide TransCanada with the requested Performance Assurance.

Article 9 – Remedies for Failure to Perform

9.1 Events of Default

Subject to Section 9.2 below, the following events shall constitute a default under this Agreement:

- (a) either Party has experienced an Insolvency Event;
- (b) either Party consolidates or amalgamates with or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger

or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement or any Transaction by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

- (c) any representation or warranty made by a Party herein is, at any applicable time, false or misleading in any material respect;
- (d) Buyer fails to provide Performance Assurance in accordance with Section 8.2;
- (e) Buyer has failed to pay any invoice under Section 6.1;
- (f) Buyer terminates or requests TransCanada to terminate service to any Service Point under a Confirmation prior to the end of the Supply Term and the interests and obligations with respect to the terminated Transaction(s) have not been assigned in accordance with Section 10.1 or 10.2; or
- (g) either Party has otherwise failed to perform its material obligations under this Agreement or any Transaction.

The Party in default above shall be referred to as the "Defaulting Party", and the other Party the "Non-Defaulting Party" for purposes of Article 9.

9.2 Notice of Default

- (a) Before exercising any of the remedies set forth in Section 9.3 which arise out of a Section 9.1(e) default, the Non-Defaulting Party, shall provide the Defaulting Party with written notice of the alleged default and the Defaulting Party shall have a period of three (3) Business Days from receipt of the notice in which to remedy the default.
- (b) Before exercising any of the remedies set forth in Section 9.3 which arise out of a Section 9.1(g) default, the Non-Defaulting Party, shall provide the Defaulting Party with written notice of the alleged default and the Defaulting Party shall have a period of fifteen (15) days from receipt of the notice in which to remedy the default.
- (c) The notice provided under Sections 9.2(a) and (b) shall be entitled "Notice of Default" on its face and shall provide reasonable particulars of the alleged default.

9.3 Remedies for Default

If a default under Section 9.1 has not been remedied by the Defaulting Party within the period(s) specified in Section 9.2, or not otherwise excused by the Non-Defaulting Party, then the Non-Defaulting Party shall be entitled to do one or both of the following:

- (i) suspend the provision or receipt of service, as applicable, under any or all Transactions until such time as the Defaulting Party is no longer in default under Section 9.1 and collect liquidated damages from the Defaulting Party calculated in accordance with Section 9.4 for the period service was suspended; or
- (ii) terminate all Transactions without further notice to and receive liquidated damages from the Defaulting Party calculated in accordance with Section 9.4 provided that at the time an election is made to terminate, the Defaulting Party continues to be in default under Section 9.1.

9.4 Liquidated Damages

- (a) If the Non-Defaulting Party terminates all Transactions pursuant to Section 9.3, the Non-Defaulting Party shall calculate the Liquidated Damages from the notice date of termination, which may be retroactive in time to the date Buyer's accounts were unenrolled from TransCanada's supply service. "Liquidated Damages" as used in this Article 9, means the present value of the economic loss suffered by a Party, plus any costs (including reasonable attorney's fees) incurred as a result of the termination of the Transactions.
 - (i) Where TransCanada is the Non-Defaulting Party, TransCanada's economic loss shall equal the Liquidation Quantity multiplied by the positive difference between the Contract Price and the then current market price of the Liquidation Quantity as determined by TransCanada in a commercially reasonable manner.
 - (ii) Where Buyer is the Non-Defaulting Party, Buyer's economic loss shall equal the Liquidation Quantity multiplied by the amount equal to the negative difference between the Contract Price and the price Buyer would have to pay to obtain the same service from a third party for the lowest commercially

**POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS**

reasonable price, plus any reasonable costs, fees and expenses associated with its calculation.

- (b) Notwithstanding any of the foregoing, the Non-Defaulting Party shall not be required to enter into a replacement contract.
- (c) The Non-Defaulting Party shall set-off or aggregate, as applicable, against the Liquidated Damages: (i) any amounts due and owing by the Defaulting Party under this Agreement; and (ii) any amounts due and owing to the Defaulting Party under this Agreement, whether or not such amounts have been invoiced.
- (d) The resulting net amount (the "Termination Payment") shall be payable by one Party to another and the Non-Defaulting Party shall pay to, or receive from the Defaulting Party, as applicable. If the Non-Defaulting Party is required to pay the Termination Payment to the Defaulting Party, then the Non-Defaulting Party may, at its option and in its discretion, set off against the Termination Payment any amounts payable, due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Parties.
- (e) The Non-Defaulting Party shall prepare an invoice and deliver the invoice, along with a reasonably detailed calculation of the Termination Payment, to the Defaulting Party no later than ten (10) Business Days following the termination of the Transactions. The Termination Payment shall be paid by the applicable Party within three (3) Business Days upon receipt of the invoice.
- (f) The remedy provided for in this Section 9.4 is without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). The Parties acknowledge that damages are difficult or impossible to determine, obtaining an adequate remedy is inconvenient and that the Liquidated Damages provided for herein constitute a reasonable pre-estimate of damages.

9.5 Limitation of Liability

- (a) Each Party shall indemnify, defend and hold harmless the other Party from and against: (i) any losses, injuries, claims, liabilities or damages resulting from any wrongful act or breach of obligation of the indemnifying Party; (ii) any Taxes for which such Party is responsible for under Section 6.2.
- (b) FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE PARTIES IS LIMITED AS SET FORTH IN THAT PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE LIABILITY OF THE PARTIES IS LIMITED TO DIRECT DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. IN NO EVENT IS EITHER PARTY LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES IN TORT, TRANSACTION OR OTHERWISE.

Article 10 Miscellaneous

10.1 Assignment

This Agreement may not be assigned by a Party without the prior written consent of the other Party, which consent may not be unreasonably withheld.

10.2 Sale of Facilities

If any of the Buyer's facilities listed in Section 4 of any Confirmation under this Agreement are intended to be sold by the Buyer ("Sold Facility") to any Person ("New Owner"), then Buyer shall provide TransCanada with fifteen (15) days prior written notice of the potential sale transaction. On the closing of such sale, Buyer may delete the Sold Facility from the Agreement upon the following conditions:

- (a) Buyer may assign its interests and obligations under this Agreement regarding such Sold Facility ("Relevant Terms") to the New Owner subject to TransCanada's prior written acceptance of the creditworthiness of the New Owner, and the New Owner's

assumption of all of the relevant obligations. Upon such assignment Buyer and TransCanada shall execute an amendment to this Agreement to reflect such assignment, to make appropriate adjustments to Buyer's Contract Quantities to reflect sale of the Sold Facility and providing for the release of Buyer from the obligations imposed on it; or

- (b) If the interests and obligations are not assigned to the New Owner, then Buyer agrees to pay Liquidated Damages, as calculated in accordance with Section 9.4, with the exception that for the purposes of this section Liquidation Quantity shall equal the Electrical Supply anticipated to be provided by TransCanada to the Sold Facility over the remaining Supply Term.

10.3 Green-e RECs

- (a) Pursuant to a Confirmation, TransCanada shall sell and deliver and the Buyer shall purchase and receive the Green-e Contract Quantity in accordance with the terms of this Agreement
- (b) Green-e Energy certifies that TC Green meets the minimum environmental and consumer protection standards established by the Center for Resource Solutions. For more information on Green-e Energy certification requirements, call 1-888-63-GREEN or log on to www.green-e.org.

10.4 Enurement

This Agreement is binding upon and enures to the benefit of the successors and permitted assigns of the Parties.

10.5 Amendments

Amendments to this Agreement are valid only if they are in writing and signed by the Parties.

10.6 Entire Agreement

This Agreement is the entire agreement between Buyer and TransCanada with regard to the subject matter, and all other prior or existing written or oral agreements or correspondence regarding its subject matter are superseded.

10.7 Time of Essence

Time is of the essence of this Agreement.

10.8 Notices of General and Material Changes

- (a) All notices and statements (which must be in writing) must be delivered personally, by courier, by overnight mail, by electronic mail, or by facsimile to the address of service of the Parties as set out on the Confirmation. Any notice sent by facsimile is deemed to have been received by the close of business on the Business Day on which it was transmitted or such earlier time as is confirmed by the receiving party. Notice by overnight mail or courier is deemed to have been received two Business Days after being sent, or such earlier time as may be confirmed by the receiving party. The Parties agree that names and addresses for notices can be modified as necessary without amending the Agreement.

- (b) Buyer shall provide TransCanada prior written notice as soon as possible of: (i) modifications to the electrical connections of Buyer's end use equipment to a Service Point that results in the addition of a new and/or additional meter; or (ii) a change in the account number assigned by the Transmitting Utility to a Service Point. TransCanada and Buyer agree to add the new meter and/or Transmitting Utility account number as a new Service Point under the applicable Confirmation with no change to the Contract Quantity wherein the same charges for Electrical Supply will apply.

10.9 Waiver

The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

10.10 Audit

Each Party may at its cost and expense, and with reasonable prior notice to the other Party and at reasonable times, examine the books and records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, notice, claim, demand, charge, payment, cost, expense or computation made or incurred by such Party under this Agreement. The right(s) of the Parties described in this Section continue

**POWER PURCHASE AGREEMENT
TERMS AND CONDITIONS**

for a period of one year following the occurrence of each event or transaction that triggers the exercise of such right(s), and not thereafter.

10.11 Confidentiality

Neither Party may disclose the terms of this Agreement or any Transaction to a third party (other than the Party's and its Affiliates' employees, lenders, credit insurer, counsel, agents or accountants, or Buyer's energy broker or consultant) except in order to comply with any applicable law, order, regulation or exchange rule. However, each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties also agree that they must agree upon the terms of a press release regarding this Agreement or any Transaction, and that no information may be released by either Party without the consent of the other. Unless expressly stated herein, the confidentiality obligations in this Agreement do not supersede any existing nondisclosure or confidentiality agreement entered into between the Parties with respect to the subject matter of this Agreement.

10.12 Representations, Warranties and Acknowledgements

Each Party represents and warrants that it has the necessary corporate and legal authority to enter into this Agreement and to perform each duty and obligation imposed by this Agreement and that this Agreement, when executed by the duly authorized representatives of each Party, represents a valid, binding and enforceable legal obligation of the Party. Each Party represents that each individual affixing a signature to this Agreement has been duly authorized to execute this Agreement on behalf of the Party he or she represents, and that by signing the Agreement, a valid, binding and enforceable legal obligation of the Party has been created. Buyer acknowledges that (i) the Contract Price is a fixed price for the applicable Supply Term and will not fluctuate based on market prices for Electrical Supply; and (ii) it has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and is capable and prepared to assume such risks.

10.13 Further Assurances

Each of the Parties shall promptly execute and deliver all such deeds, documents, instruments and assurances and do or cause to be done all such acts and things as are necessary or advisable fully to perform and carry out the provisions and intent of this Agreement.

10.14 Forward Contract

The Parties agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code (11 U.S.C. Section 101(25)(2000)) and each Party represents and warrants to the other Party and agrees that it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (11 U.S.C. Section 101(26)(2000)).

10.15 Prior Agreements and Transactions

All previously executed power purchase agreements ("Prior Agreements") between TransCanada and the Buyer are hereby superseded and replaced by the terms and conditions of this Agreement, provided however, that, any existing transactions ("Prior Transactions") entered into under such Prior Agreements shall be incorporated and governed by the terms and conditions of this Agreement. In the event of any conflicts between the terms and conditions of the Prior Transactions and this Agreement, the terms and conditions of this Agreement shall prevail.

10.16 Counterpart Execution

This Agreement may be signed and delivered in counterparts with the same effect as if both Parties had signed and delivered the same copy, and

when each Party has executed and delivered a counterpart, all counterparts together constitute one Agreement.

10.17 Facsimile Signature and Imaged Documents.

A signature delivered by facsimile ("Facsimile Documents") shall be deemed to be an original signature for purposes of this Agreement and any Confirmation executed hereunder. Any original executed copy of this Agreement or any Confirmations executed hereunder, may be imaged and stored electronically ("Imaged Documents"). A signature delivered by Imaged Document or Facsimile Document shall be deemed an original for purposes of this Agreement and shall be binding upon the Party so delivering as an original signature. Imaged Documents or Facsimile Documents may be introduced as evidence in any proceedings as if such were original business records and neither party shall contest the admissibility of Imaged Documents or Facsimile Documents as evidence in any proceeding.

By signing this Agreement, Buyer acknowledges that: (i) it has read the Terms and Conditions and agrees to be bound to the terms of this Agreement; (ii) it has affirmatively designated TransCanada as Buyer's sole competitive supplier for the accounts to be served under this Agreement during any Supply Term, and (iii) Buyer understands that an action by Buyer to terminate service to any account to be served under this Agreement prior to the end of a Supply Term may result in costs and charges to the Buyer.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

TRANSCANADA POWER MARKETING LTD.

Per: _____



Per: _____

TOWN OF COLCHESTER

Per: _____

Name:

Title:

Per: _____

Name:

Title: