NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

February 22, 2011

VIA ELECTRONIC MAIL

Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Suite 801
Newark, New Jersey 07102

Re: I/M/O the Long-Term Capacity Agreement Pilot Program
Docket No. EO11010026

Dear Secretary Izzo:

On behalf of NRG Energy, Inc. ("NRG"), the enclosed initial comments are submitted to the Board of Public Utilities in the above-referenced docket regarding the forms of Standard Offer Capacity Agreement submitted by interested parties and the form of Security Agreement submitted by Public Service Electric and Gas Company, Jersey Central Power & Light Company, Atlantic City Electric Company and Rockland Electric Company.

In addition to this submission, NRG has simultaneously submitted its initial comments to Levitan & Associates, Inc., as the LCAPP Agent, via the website established at www.nj-lcapp.com.

Respectfully submitted,

/s/ Julie L. Friedberg

Julie L. Friedberg

cc: (via electronic submission; w/enclosure)
Levitan & Associates, Inc.

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE LONG-TERM CAPACITY AGREEMENT PROGRAM	:	Docket No. EO11010026

INITIAL COMMENTS OF NRG ENERGY, INC. REGARDING PROPOSED FORM OF STANDARD OFFER CAPACITY AGREEMENT

In accordance with the schedule established by the Board of Public Utilities (the "Board") in the above-captioned matter (the "LCAPP Proceeding") by Order dated February 10, 2011, NRG Energy, Inc. ("NRG") hereby submits its initial comments regarding the forms of Standard Offer Capacity Agreement ("SOCA") proposed by the State's electric distribution companies (the "EDCs"), the Division of Rate Counsel, CPV Shore, LLC, Exelon and LS Power, as well as the Initial Comments of Hess Corporation, submitted to the Board on February 14, 2011. Although the forms submitted by Rate Counsel, CPV, Exelon and LS Power each have elements of a form of SOCA, NRG's initial comments focus on the EDCs' draft, which, in NRG's opinion, provides the most complete draft agreement on which to base the final form of SOCA. NRG has appended to these comments, as Exhibit A, more specific edits that it is requesting either be made to the EDCs' SOCA, or ultimately reflected in the form of SOCA prepared by the LCAPP Agent and proposed for execution at the conclusion of the LCAPP Proceeding, as well as to the EDCs' Security Agreement. In light of the legislature's stated intent in N.J.S.A. 48:3-98.2 *et seq.* (the "LCAPP Act") to, among other goals, foster and incentivize new generation and "help ensure sufficient capacity to stabilize power prices," N.J.S.A. 48:3-

98.2.i, and "assist the State's economic development and create opportunities for employment in the energy sector," N.J.S.A. 48:3-98.2(e), NRG's substantive comments herein address the following issues:

(1) **Allocation of Risk of Changes in Regulation, Law and PJM Market Rules** – The EDCs' form of SOCA places the entirety of the risks associated with regulatory, changes-in-law and changes in PJM Market Rules on the Generator (as defined in the SOCA), without regard to the express language of the LCAPP Act. Requiring the Generator to bear this level of risk not only contravenes the LCAPP Act, but also will render the SOCA un-financeable and, thus, will not achieve the results intended by the Legislature in adopting the LCAPP Act.

(2) **Generator Performance Rights and Termination Options** – Given development uncertainties (such as the ability to obtain requisite interconnections, permits and financing), and the uncertainties surrounding the LCAPP itself, the Generator should have certain specified termination rights, and a sufficient grace period to achieve commercial operation after the Awarded Commencement Date (as defined in the SOCA)

(3) **Termination Payments** – Calculation of the Termination Payment due to the EDC, as the non-defaulting or non-terminating party, is unduly burdensome to the Generator. On the other hand, the calculation of the Termination Payment due to the Generator, as the non-defaulting or non-terminating party, is sufficiently inadequate that it renders the SOCA un-financeable.

(4) Financing-related Provisions and Security Agreement – Certain provisions critical to financing development of these projects, such as the Generator's ability to assign a security interest in the SOCA to its lenders, must be added to the form of SOCA and a provision for subordination of the EDCs interest and rights to lenders must be added to the Security Agreement. In addition, the Security Agreement is overbroad in its definition of Collateral given the EDCs' limited interest in the facility.

In addition, NRG reserves the right to offer supplemental comments regarding the SOCA upon its further review of the EDCs' form of Security Agreement. The EDCs' Security Agreement was not posted to the LCAPP Proceeding website until Friday, February 18, 2011; and notice of its posting was not received until after 5:00 p.m. on that date.

(1) Allocation of Risk of Changes in Regulation, Law and PJM Market Rules

Perhaps the most troubling aspect of the EDCs' draft SOCA is the fact that it inappropriately places the risk of changes in regulation, law and PJM market changes entirely on the Generator and requires the Generator to bear the risk of suspension or termination of the SOCA, not only in contravention of the language of the LCAPP Act, but also contrary to basic concepts of fairness. Section 8 of the SOCA defines a number of Termination Events, including (i) adoption of or any change in any applicable law such that performance of the SOCA becomes illegal (SOCA subsection 8.1.1., "Illegality") (ii) invalidation of or declaration of unconstitutionality of the LCAPP Act or a portion thereof (SOCA subsection 8.1.2, "Invalidity of the Act"), (iii) denial by the

Board or any court of the EDC's recovery of costs associated with the SOCA or the LCAPP Proceeding (SOCA subsection 8.1.3, "Denial of Utility's Recovery"); (iv) elimination or modification of PJM's Reliability Pricing Model ("RPM") such that the either party cannot perform its obligations under the SOCA (SOCA subsection 8.1.4, "Elimination or Substantial Modification of RPM"); and (v) a determination that the SOCA is subject to a requirement to be executed or cleared on an exchange (SOCA subsection 8.1.5 "Execution or Clearing Requirement"). In addition, Section 2.5 of the EDCs' form of SOCA allows for an indefinite suspension of performance by both parties by Board action.

In connection with each of these Termination Events, the SOCA provides for a Termination Payment from the Generator that is not only unduly burdensome (see discussion below in Part 3) but also places additional risk on the counterparty bearing the highest risk under the SOCA even without these additional regulatory burdens, and the counterparty with the least amount of control or influence over the regulatory, legal and market processes. Subsection 9.3.2 of the EDCs' SOCA provides as follows:

> If an Early Termination Date results from Section 8.1.1 (an Illegality), Section 8.1.2 (an Invalidity of the Act), or Section 8.1.5 (Execution or Clearing Requirement), each party shall return to the other party all amounts received from that party pursuant to Sections 2.2 and 4.1 of this Agreement. If an Early Termination Date results from Section 8.1.3 (a Denial of Utility's Recovery), the Generator shall return to Utility all amounts paid by Utility to Generator pursuant to Section 2.2 and 4.1 of this Agreement recovery of which has been denied Utility. If an Early Termination Date results from Section 8.1.4 (an Elimination or Substantial Modification of RPM), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.

Moreover, as drafted, a suspension of the SOCA obligations by the Board would leave the Generator without recourse whatsoever. See Section 2.5.

Hence, the practical impact these SOCA provisions is that that the Generator, who has constructed and financed its facility in reliance on the revenue stream to be earned over the term of the SOCA, will not only be deprived of such revenue stream based on regulatory, statutory and market risk factors entirely outside of its control, but in some instances also would be required to disgorge revenues received to date. Such a result is patently inequitable and should not be condoned by the Board.

Furthermore, these provisions contravene the express mandate of the LCAPP Act. The LCAPP Act clearly states that "each SOCA shall become irrevocable upon the issuance of such order approving a SOCA." N.J.S.A. 48:3-98.3.e (emphasis added.) Moreover, the Board must "order the full recovery of all costs associated with the [EDCs'] resulting SOCAs, and the costs of the agent retained pursuant to [the LCAPP Act], from ratepayers through a non-bypassable, irrevocable charge." N.J.S.A. 48:3-98.3.d. In crafting the Termination Events set forth in Section 8, the EDCs place an untenable risk on the Generator notwithstanding a clear legislative mandate designed to fully shield both the Generators and the EDCs from regulatory uncertainty – not unlike the securitization provisions of the Electric Discount and Energy Competition Act of 1999 ("EDECA") that provide for the establishment of an "irrevocable" transition bond charge by the Board, which, once established "in a bondable stranded costs rate order shall not be offset, reduced, adjusted or otherwise diminished either directly or indirectly." N.J.S.A. 48:3-62.a.

As noted by other parties providing comments on the form of SOCA, allocation of regulatory, statutory and market risks will significantly impact the ability of interested Generators to propose a reasonable SOCP that results in the net benefits required by the LCAPP Act. Additionally, this risk allocation also will render the SOCA un-financeable and, hence, the LCAPP Proceeding will not result in the construction of new generation as intended by the Legislature in enacting the LCAPP Act. If the Board nonetheless believes that the Termination Events defined by the EDCs should be retained in the SOCA, then the SOCA should mitigate this risk to the Generators, consistent with the intent of the language of the LCAPP Act, and provide for a Termination Payment that fully compensates the Generator for its lost revenues. Accordingly, in order to appropriately allocate the regulatory risk and provide reasonable remedies to both parties, the SOCA should be revised as follows.

A. Section 2.5 should be revised to permit the Generator to declare a Termination Event if the Board suspends the parties' obligations and such suspension continues for a period longer than six months:

> In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act that (i) imposes an obligation on either party to make any payment to another party; (ii) assures Utility of recovery from ratepayers through a non-bypassable irrevocable charge of all costs directly or indirectly associated with this Agreement or any costs of the agent retained to implement provisions of the Act; or (iii) imposes an obligation on Generator to offer capacity from the Capacity Facility in the Base Residual Auction, then, no payment pursuant to Sections 2.1, 2.2 and 4.1 with respect to any Delivery Year or portion of a Delivery Year that is within the period of suspension shall be owed by either party, and the non-performance of the requirements of those provisions with respect to the period of suspension shall not be an Event of Default; *provided, that,* if such suspension continues for a

period greater than six (6) months, then Generator, at its sole discretion, may declare a Termination Event pursuant to Section 8.1.4.

B. Section 8.1 should be revised to define a suspension that endures for a period longer than six months to be a Termination Event:

> Suspension. Pursuant to Section 2.5 of this Agreement, in the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act and such suspension continues for a period longer than six (6) months.

C. Subsection 8.1.2, "Invalidity of the Act," Subsection 8.1.3, "Denial of Utility's Recovery," Subsection 8.1.4, "Elimination or Substantial Modification of RPM," and Subsection 7.1.9, "Failure to Clear a Base Residual Auction" should be deleted.

D. Section 9.3.2 should be revised as follows:

> If an Early Termination Date results from Section 8.1, then the Utility shall pay to the Generator (i) all Unpaid Amounts owing to the Generator; and (ii) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the current Delivery Year.

(2) Generator Performance Obligations and Termination Rights

As noted by other parties providing comments on the form of SOCA, development, permitting and construction of a generating facility requires a significant amount of "lead time" due to the complexity of the development process. Prior to commencing commercial operation, a developer not only must plan and complete engineering, procurement and construction activities, but also must obtain the necessary permits, licenses, interconnection rights and financing. Some of elements of the

development process are well within the control of the developer, and, using commercially reasonable efforts, can be completed within a finite time frame. However, many steps of the development process rely on third parties' cooperation and performance. For example, beyond complying with applicable deadlines and promptly responding to follow-up requests, the process and time frame to obtain permits and licenses from local, state and, if necessary, federal agencies, are not within any private party's control. No developer can control all of the risks associated with force majeure. In addition, as the Board is undoubtedly aware, in late 2008, the financial markets experienced a dramatic downturn. The condition of those markets rendered it exceedingly difficult to obtain financing on commercially reasonable terms, and in some cases, at all. No one can predict what challenges the Generator may face in obtaining financing for its facility.

As drafted, the SOCA does not recognize any of these potential challenges or their impact on the Generator's ability to achieve commercial operation by the Awarded Commencement Date (as defined in the SOCA). For these reasons, NRG proposes to include the following remedies.

A. The following defined term should be added:

> "Force Majeure" means an event or circumstance, such as natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the Claiming Party; and, (iii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Supplier's Fuel supply, except when caused by Force Majeure; (b) the breakdown of Supplier's plant and/or

equipment, except when caused by Force Majeure; and (c) an occurrence or an event that merely increases the costs of, or causes an economic hardship to, a Party.

B. Revise Subsection 7.1.7, "Failure to Achieve Commercial Operation of the Capacity Facility" as follows:

> If no Force Majeure event has been declared, Generator fails to cause the Capacity Facility to achieve commercial operation by no later than the twelve (12) months after the Awarded Commencement Date, or, if a Force Majeure event has been declared, Generator fails to cause the Capacity Facility to achieve commercial operation by no later than the eighteen (18) months after the Awarded Commencement Date.

C. Add a new Section 8.2 to allow the Generator to terminate the SOCA prior to achieving commercial operation:

> 8.2 Generator Convenience. If, notwithstanding its commercially reasonable efforts, prior to its Awarded Commencement Date, Generator is unable (i) to obtain financing for the Capacity Facility on commercially reasonable terms, (ii) to obtain material local, state or federal permits necessary to construct or operate the Capacity Facility in accordance with its obligations under this Agreement, (iii) to execute any agreements necessary to interconnect the Capacity Facility to the transmission system, or (iv) to overcome the impact of a Force Majeure, then Generator, in its sole discretion, may declare a Termination for Convenience, by not more than twenty (20) days notice to the Utility, designate a day not earlier than the day such notice is effective as an Early Termination Date.

D. The SOCA should be revised to provide for an appropriate Termination Payment if the Generator terminates pursuant to Section 8.2, and, in doing so, avoid "pancaking" damages. If the Generator has undertaken an obligation in the PJM Base Residual Auction ("BRA"), then it will be responsible for any penalties associated with its delayed commercial

operation, while the Utility's customers will have received the benefits of the Generator's participation in the BRA. In this instance, additional damages in the form of a Termination Payment to the Utility for the benefit of its customers are unnecessary. Therefore, NRG proposes to add a new Subsection 9.3.4:

> Termination for Convenience. If an Early Termination Date results from Section 8.2, then the Generator shall pay to the Utility an amount equal to the product of (a) $100 per megawatt and (b) the Awarded Capacity Amount specified in megawatts.

(3) Termination Payments

As noted in Part 1 above, with regard to the allocation of risk under the EDCs' SOCA, the EDCs' draft SOCA places an unduly burdensome level of risk on the Generator. This undue burden is further illustrated by the Termination Payment calculations under the SOCA. As an initial matter, the EDCs' SOCA imposes excessive damages in the event of a Generator default due to a failure to clear in the BRA. Subsection 9.3.1 provides:

> . . . in the case of an Event of Default relating to participating in or clearing a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such [BRA].

This calculation would render the Generator liable for damages well in excess of the Utility's expected benefits, and would render the SOCA un-financeable.

On the other hand, the EDCs' calculation of the Termination Payment due to the Generator, as the non-defaulting or non-terminating party, does not approach a level that would make the Generator whole for its damages and is so inadequate that it renders the SOCA un-financeable. As drafted, Section 9.3.1 requires the Utility only to reimburse the Generator for any unpaid amounts then due and owing as of the Termination Date (as defined in the SOCA) and any expenses related to the Generator's enforcement of its rights under the SOCA. Thus, the payment due to the Generator would in no way make it whole for its lost revenues over the remaining term of the SOCA — which is the extent of the damages that any lender would require before extending credit in reliance on such a contract.

For these reasons, NRG requests the following revisions to Subsection 9.3.1:

> 9.3.1. Events of Default.
>
> (a) If the Early Termination Date results from a Generator Event of Default, the Generator will pay the Utility: (i) all Unpaid Amounts owing to the Utility; (ii) all reasonable expenses payable under Section 9.4; and (iii), in the case of an Event of Default relating to participating in a Base Residual Auction, an amount equal the product of (3) multiplied by the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) three hundred and sixty-five (365).
>
> (b) If the Early Termination Date results from a Utility Event of Default, the Utility will pay the Generator: (i) all Unpaid Amounts owing to the Generator; (ii) all expenses payable under Section 9.4; (iii) if the Event of Default occurs during a Delivery Year, an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) the number of days remaining in the Delivery Year following the Early Termination Date; and (iv) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term as of the next Delivery Year commencing after Early Termination Date.

(4) Financing-related Provisions and Security Agreement

In addition to the financing-related deficiencies addressed above in Parts 1, 2 and 3 of its comments, NRG notes that certain, fundamental provisions required for financing are not included in either the EDCs' SOCA or Security Agreement. As noted above, Generators developing facilities of the size contemplated by the LCAPP Act (i.e., up to 700 MW), commonly seek financing for project development and construction. For that reason, any forms of SOCA and Security Agreement ultimately executed by the EDCs and the Generator must include provisions customarily required by lenders. Such provisions include the ability to make an assignment for the benefit of secured parties, as well as timely payment to the Generator of revenues due under the SOCA.

Furthermore, the Security Agreement provides the EDCs with an overbroad security interest in the Generator's collateral. Article II of the Security Agreement defines the Collateral as follows:

> (i) any and all payments owed by Secured Party to Grantor under the SOCA in a Delivery Year (the "Current Delivery Year") to the extent to which Grantor has any payment obligation to Secured Party under Section 4.1.2 of the SOCA in respect of the Secured Delivery Year;
>
> (ii) in the event the payments that Secured Party owes to Grantor under the SOCA in the Current Delivery Year are less than the payment obligation of Grantor to Secured Party under Section 4.1.2 of the SOCA in respect of the Secured Delivery Year, then any and all payments owed to Grantor by PJM in respect of Grantor's supply of unforced capacity in RPM during the Secured Delivery Year (the "PJM Receivables");
>
> (iii) the Collateral Account and all interest earned on amounts in the Collateral Account;
>
> (iv) [all Documents, including complete and accurate copies of all documents related to the Collateral, whether or

> not physically delivered to the Secured Party pursuant to this Security Agreement;] and
>
> (v) and all accessions to, substitutions for and replacements, proceeds of any kind (including any distributions, payments or other assets exchanged for or received on account of the foregoing), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing.

As a project developer and wholesale generator with an active power marketing arm, NRG has extensive experience with security agreements of the nature proposed by the EDCs. However, in its experience, the rights the EDCs wish to assert through, and the requirements imposed on the Generator by, the Security Agreement contemplate a grant customarily made to a lender who is financing most of the cost of the facility on a non-recourse basis. Such a grant is overreaching in the context of this transaction, which is merely a contract for differences between the SOCP and the market capacity price. Moreover, in the event that the Board believes that such a security interest is necessary, then the EDC must subordinate its interests and rights to lenders. Without subordination, the Security Agreement would render it extremely difficult, if not impossible, to project finance the facility.

For these reasons, NRG requests the following revisions to the forms of SOCA and Security Agreement.

A. The following defined term should be added to the SOCA:

> "Financing Party" means the lending institution(s) (including any trustee or agent on behalf of such institutions) providing financing or refinancing, any other credit enhancement or interest rate hedging products to the Generator or any member or shareholder of the Generator or of Generator's parent for the acquisition, construction,

ownership, operation, maintenance, or leasing of the Capacity Facility.

B. Subsection 2.4.2 of the SOCA should be revised to clarify that certain payment obligations continue notwithstanding the declaration of an Event of Default or an Early Termination Date:

> With the exception of any payment obligations under this Agreement, each obligation of each party under this Agreement is subject to (1) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing and (2) the condition precedent that no Early Termination Date has occurred or been effectively designated.

C. Section 2.9 of the SOCA should be revised to provide for prompt payment of corrected Transaction Payments:

> Corrections to Input to Transaction Payment. If PJM revises any of the inputs required for Utility to calculate any payment required under Section 4.1, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due beginning with the next monthly payment made during the Delivery Year in which Utility receives notice of the revision. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

D. Section 10.2 SOCA should be revised to allow the Generator to assign to its lenders a security interest in the SOCA:

> 10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and the Board, (i) assign this Agreement to a purchaser of all or substantially all of the assets of Generator; (ii) assign this Agreement in connection with a merger of Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator; provided that such purchaser or the Person

surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility; or (iii) assign, mortgage, hypothecate, pledge or otherwise encumber, by way of security or collateral, all or any portion of the Generator's interest in and to this Agreement in favor of any Financing Party and its successors and assigns and any such Financing Party may assign such interest in and to this Agreement to any subsequent assignee in connection with the sale, transfer, or exchange of its rights under this Agreement. Any such Financing Party or its designee may operate or transfer the Facility pursuant to such assignment upon and after the exercise of such Financing Party's rights and enforcement of its remedies against the Generator or the Facility under any deed of trust or other security instrument, creating a lien in its favor, in each case with notice to, but without the consent of, Utility. The Utility agrees to enter into a consent and agreement with the Financing Party with respect to this Agreement and the collateral assignment in customary form for project financings. In order for a collateral assignment to occur as contemplated in this Section 10.2, there must be a single entity designated as trustee on behalf of all Financing Parties and the trustee or agent, on behalf of all Financing Parties, must agree to comply with all provisions in this Section 10.2.

E. The following subordination language should be added to Article II of the Security

Agreement:

The Secured Obligations shall be subordinate in right of payment, priority and remedies only to the interests of Grantor's lenders. In connection with the foregoing, Secured Party agrees to negotiate in good faith any subordination or intercreditor agreements, as may be reasonably requested by Grantor's lenders ("Lender Intercreditor Agreements"). The Lender Intercreditor Agreements shall be in form and substance reasonably agreed to by Secured Party, Grantor and Grantor's lenders and shall include, among others, the following provisions:

(a) So long as any obligations to its lenders are outstanding, Grantor shall not make or cause to be made, and Secured Party shall not demand, accept or

receive, directly or indirectly, any payment (in cash, property, by set-off or otherwise) on or with respect to the Secured Obligations and Documents.

(b) So long as any obligations to Grantor's lenders are outstanding, Secured Party shall not:

(i) commence or join (unless any of the lenders commence or join) in any proceeding against the Grantor under any federal or state bankruptcy, reorganization, insolvency, readjustment of debt, rearrangement of debt, receivership or liquidation law or statute; or

(ii) exercise any remedies under, or in respect of, the Secured Obligations or the Documents, or commence a proceeding in respect of the Secured Obligations or the Documents, or to enforce a payment or a lien or collect on payment in respect of the Secured Obligations or the Documents.

Conclusion

For the reasons stated above, and consistent with the intent and the mandates of the LCAPP Act, NRG respectfully requests that the Board direct the LCAPP Agent to reflect the concepts and revisions set forth above in the forms of SOCA and Security Agreement ultimately finalized and proposed to Generators participating in the LCAPP Proceeding.

Respectfully submitted,
NRG Energy, Inc.

By: /s/ *Julie L. Friedberg*

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EXHIBIT A

NRG Recommended Changes

I. SOCA

Changes to SECTION 1 DEFINITIONS; RULES OF INTERPRETATION

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least ~~ten~~ fifty percent (~~1~~50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least ~~ten~~fifty percent (~~1~~50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

"Conclusion Date" means the earlier of May 31, [ ] or the Early Termination Date.

"Eligible Generator" means an owner or developer of an electric power generating facility that the Board has determined to qualify as an "eligible generator" pursuant to the Act.

"Financing Party" means the lending institution(s) (including any trustee or agent on behalf of such institutions) providing financing or refinancing, any other credit enhancement or interest rate hedging products to the Generator or any member or shareholder of the Generator or of Generator's parent for the acquisition, construction, ownership, operation, maintenance, or leasing of the Capacity Facility.

"Force Majeure" means an event or circumstance, such as natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or the result of the negligence of, the Claiming Party; and, (iii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid, or cause to be avoided; provided, however, notwithstanding the foregoing, none of the following events or circumstances will constitute Force Majeure: (a) the loss or failure of Supplier's Fuel supply, except when caused by Force Majeure; (b) the breakdown of Supplier's plant and/or equipment, except when caused by Force Majeure; and (c) an occurrence or an event that merely increases the costs of, or causes an economic hardship to, a Party.

Changes to SECTION 2 OBLIGATIONS

2.4. Conditions Precedent to Obligations. With the exception of any payment obligations under this Agreement, ~~E~~each obligation of each party under this Agreement is subject to (1) the condition precedent that no Event of Default with respect to the other party has occurred and is continuing and (2) the condition precedent that no Early Termination Date has occurred or been effectively designated.

2.5. Suspension of Obligations. In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act that (i) imposes an obligation on either party to make any payment to another party; (ii) assures Utility of recovery from ratepayers through a non-bypassable irrevocable charge of all costs directly or indirectly associated with this Agreement or any costs of the agent retained to implement provisions of the Act; or (iii) imposes an obligation on Generator to offer ~~and clear~~ capacity from the Capacity Facility in the Base Residual Auction, then, no payment pursuant to Sections 2.1, 2.2 and 4.1 with respect to any Delivery Year or portion of a Delivery Year that is within the period of suspension shall be owed by either party, and the non-performance of the requirements of those provisions with respect to the period of suspension shall not be an Event of Default *provided*, *that*, if such suspension continues for a period greater than six (6) months, then Generator, at its sole discretion, may declare a Termination Event pursuant to Section 8.1.4.

2.8. Calculations. Utility shall make all calculations of payments due under Sections 2.2 and 4.1 in accordance with the terms of this Agreement, in good faith and with commercial reasonableness, and its determinations and calculations will be binding, subject to the resolution of any Calculation Dispute. Inaccuracy in any calculation shall not be an Event of Default. The sole remedy of the parties with respect to any inaccuracy of a calculation will be the right (but not the obligation), to commence a Calculation Dispute, unless such inaccuracy is the result of gross negligence, willful misconduct or malfeasance.

2.9. Corrections to Input to Transaction Payment. If PJM revises any of the inputs required for Utility to calculate any payment required under Section 4.1, Utility will reflect the amount (if any) that is payable as a result of that correction (including without limitation interest on such amount payable from the date of original payment under Section 4.1 through the date of payment under this Section 2.9 at the Interest Rate) in the calculation of payment of payments due beginning with the next monthly payment made during the Delivery Year in which Utility receives notice of the revision~~for the Delivery Year after Utility receives notice of the revision~~. Utility shall calculate the correction so as to place the parties in the same economic position after such payment as they would have been had the correct input been employed initially.

Changes to SECTION 4 TRANSACTIONS

4.1. Transactions.

4.1.1. If, for a Delivery Year, the Standard Offer Capacity Price is greater than the Resource Clearing Price then, subject to Section 2.4, Utility will pay Generator each Month during the Delivery Year one-twelfth of the product of (i) the difference between the Standard Offer Capacity Price and the Resource Clearing Price for the applicable Delivery Year, (ii) the Available Capacity Amount for the applicable Delivery Year, (iii) the number of days in the applicable Delivery Year; and (iv) Utility's Load-Ratio Factor for the applicable Delivery Year.

4.1.2. If, for a Delivery Year, the Resource Clearing Price is greater than the Standard Offer Capacity Price then, subject to Section 2.4, Generator will pay Utility each Month an amount equal to one-twelfth of the product of (i) the difference between the Resource

Clearing Price for the applicable Delivery Year and the Standard Offer Capacity Price, (ii) the Available Capacity Amount for the applicable Delivery Year, (iii) the number of days in the applicable Delivery Year, and (iv) Utility's Load-Ratio Factor for the applicable Delivery Year.

Changes to SECTION 7 EVENTS OF DEFAULT

7.1.7. Failure to Achieve Commercial Operation of the Capacity Facility. If no Force Majeure event has been declared, Generator fails to cause the Capacity Facility to achieve commercial operation by no later than twelve (12) ~~the six (6) months~~ after the Awarded Commencement Date, or, if a Force Majeure event has been declared, Generator fails to cause the Capacity Facility to achieve commercial operation by no later than eighteen (18) months after the Awarded Commencement Date.

7.1.8. Failure to Participate in a Base Residual Auction. With respect to Generator, Generator (a) fails to submit a supply offer for an amount equal to ninety percent (90%) or more of the Awarded Capacity Amount from the Capacity Facility in any Base Residual Auction with respect to a Delivery Year during the Delivery Term as directed by the Board in accordance with PJM Market Rules, and (b) (i) if no Force Majeure event has been declared, Generator fails to submit a supply offer for an amount equal to ninety percent (90%) or more of the Awarded Capacity Amount from the Capacity Facility in the Base Residual Auction for the following Delivery Year, or, (ii) if a Force Majeure event has been declared, Generator fails to submit a supply offer for an amount equal to ninety percent (90%) or more of the Awarded Capacity Amount from the Capacity Facility in the Base Residual Auctions for the following two (2) Delivery Years.

~~7.1.9. Failure to Clear a Base Residual Auction. With respect to Generator, Generator's supply offer from the Capacity Facility fails to clear in any Base Residual Auction with respect to a Delivery Year during the Delivery Term.~~

Changes to SECTION 8 TERMINATION EVENTS

8.1.1. Illegality. Due to the adoption of, or any change in, any Applicable Law, other than the Act, after the Effective Date, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any Applicable Law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 6.2) for a party:

* * *

~~8.1.2. Invalidity of the Act. If a court invalidates or declares unconstitutional the Act or portion thereof requiring or specifying some performance, right, or obligation of Utility or Generator.~~

~~8.1.3. Denial of Utility's Recovery. If the Board or any court with jurisdiction denies Utility, or fails to uphold Utility's right to, timely and complete recovery from ratepayers through a non-bypassable, irrevocable charge of any payment under this Agreement or any other cost~~

~~directly or indirectly arising from Utility's performance of this Agreement or any costs of the agent retained to implement provisions of the Act.~~

~~8.1.4. Elimination or Substantial Modification of RPM. If PJM's RPM is eliminated or modified in such a way that the performance, calculation and payment of the Transaction set forth in Sections 2 and 4 cannot be performed or implemented.~~

8.1.~~5~~3. Execution or Clearing Requirement. The Transaction is determined to be subject to any requirement that it be executed or cleared on an exchange or a multiparty platform or similar facility.

8.1.4. Suspension. In the event the Board exercises its authority under the Act to suspend the applicability of any provision of the Act pursuant to Section 2.6 of this Agreement and such suspension continues for a period longer than six (6) months.

8.2 Generator Convenience. If, notwithstanding its commercially reasonable efforts, prior to its Awarded Commencement Date, Generator is unable (i) to obtain financing for the Capacity Facility on commercially reasonable terms, (ii) to obtain material local, state or federal permits necessary to construct or operate the Capacity Facility in accordance with its obligations under this Agreement, (iii) to execute any agreements necessary to interconnect the Capacity Facility to the transmission system, or (iv) to overcome the impact of a Force Majeure, then Generator, in its sole discretion, may declare a Termination Event.

Changes to SECTION 9 REMEDIES

9.1.2. If at any time a Termination Event has occurred and is then continuing, then either party in the case of an Illegality, an Invalidity of the Act, an Elimination or Substantial Modification of RPM or an Execution or Clearing Requirement or Generator in the case of Generator Convenience~~Utility in the case of Denial of Utility's Recovery~~, may, by not more than twenty (20) days notice to the other party specifying the relevant Termination Event, designate a day not earlier than the day such notice is effective as an Early Termination Date.

9.3.1. Events of Default.

(a) If the Early Termination Date results from a Generator Event of Default, the Generator will pay the Utility: (i) all Unpaid Amounts owing to the Utility; (ii) all reasonable expenses payable under Section 9.4; and (iii), in the case of an Event of Default relating to participating in a Base Residual Auction, an amount equal the product of (3) multiplied by the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) three hundred and sixty-five (365).

(b) If the Early Termination Date results from a Utility Event of Default, the Utility will pay the Generator: (i) all Unpaid Amounts owing to the Generator; (ii) all expenses payable under Section 9.4; (iii) if the Event of Default occurs during a Delivery Year, an amount equal to the product of (a)

the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; and (c) the number of days remaining in the Delivery Year following the Early Termination Date; and (iv) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term as of the next Delivery Year commencing after Early Termination Date.

~~If the Early Termination Date results from an Event of Default, the Defaulting Party will pay the Non-Defaulting Party: (i) all Unpaid Amounts owing to the Non-Defaulting Party; (ii) all expenses payable under Section 9.4; and (iii), in the case of an Event of Default relating to participating in or clearing a Base Residual Auction, an amount equal to the product of (a) the amount, if any, by which the Resource Clearing Price for such Base Residual Auction exceeds the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the Delivery Year associated with such Base Residual Auction.~~

9.3.2. Termination Events. If an Early Termination Date results from Section 8.1, then the Utility shall pay to the Generator (i) all Unpaid Amounts owing to the Generator; and (ii) an amount equal to the product of (a) the Standard Offer Capacity Price; (b) the Awarded Capacity Amount; (c) three hundred and sixty-five (365); and (d) the number of Delivery Years remaining in the Delivery Term starting with and including the current Delivery Year.~~Section 8.1.1 (an Illegality), Section 8.1.2 (an Invalidity of the Act), or Section 8.1.5 (Execution or Clearing Requirement), each party shall return to the other party all amounts received from that party pursuant to Sections 2.2 and 4.1 of this Agreement. If an Early Termination Date results from Section 8.1.3 (a Denial of Utility's Recovery), the Generator shall return to Utility all amounts paid by Utility to Generator pursuant to Section 2.2 and 4.1 of this Agreement recovery of which has been denied Utility. If an Early Termination Date results from Section 8.1.4 (an Elimination or Substantial Modification of RPM), each party shall pay to the other all Unpaid Amounts owing pursuant to the terms of this Agreement.~~

9.3.3. Notice and Payment. The party designating an Early Termination Date shall provide notice of such Early Termination Date to the other party. Upon Utility's issuance or receipt of such notice, Utility shall, as soon as practicable, calculate the amounts payable under Section 9.3.1 or 9.3.2, as applicable, and shall provide the calculation to the parties, specifying the party who is obligated to pay and the amount of such payment. An amount calculated as being due in respect of an Unpaid Amount will be payable, as applicable: ~~(i)~~ on the day which is two (2) Business Days after the date on which that notice of the amount payable is effective ~~(in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default); or (ii) on the day which is two (2) Business Days after the date on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event)~~. Such amount will be paid together with (to the extent permitted under Applicable Law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Interest Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

9.3.4. Termination for Convenience. If an Early Termination Date results from Section 8.2, then the Generator shall pay to the Utility an amount equal to the product of (a) $100 and (b) the Awarded Capacity Amount.

Changes to SECTION 10 TRANSFER

10.2. Generator's Assignment Without Consent. Notwithstanding the foregoing or anything expressed or implied herein to the contrary, Generator may, without the prior written consent of Utility and the Board, ~~assign this Agreement~~ (i) assign this Agreement to a purchaser of all or substantially all of the assets of Generator; ~~or~~ (ii) assign this Agreement in connection with a merger of Generator with another Person or any other transaction resulting in a direct or indirect change of control of Generator; provided that such purchaser or the Person surviving such merger, as applicable, agrees in writing to be bound by the terms of this Agreement, including the satisfaction of all obligations through its ownership of or control over the operation of the Capacity Facility, and not from another electric generating facility; or (iii) assign, mortgage, hypothecate, pledge or otherwise encumber, by way of security or collateral, all or any portion of the Generator's interest in and to this Agreement in favor of any Financing Party and its successors and assigns and any such Financing Party may assign such interest in and to this Agreement to any subsequent assignee in connection with the sale, transfer, or exchange of its rights under this Agreement. Any such Financing Party or its designee may operate or transfer the Facility pursuant to such assignment upon and after the exercise of such Financing Party's rights and enforcement of its remedies against the Generator or the Facility under any deed of trust or other security instrument, creating a lien in its favor, in each case with notice to, but without the consent of, Utility. The Utility agrees to enter into a consent and agreement with the Financing Party with respect to this Agreement and the collateral assignment in customary form for project financings. In order for a collateral assignment to occur as contemplated in this Section 10.2, there must be a single entity designated as trustee on behalf of all Financing Parties and the trustee or agent, on behalf of all Financing Parties, must agree to comply with all provisions in this Section 10.2.

Changes to SECTION 12 RESOLUTION OF DISPUTES

12.2.3. Any correction to a calculation upon which the parties agree to resolve the Calculation Dispute, shall be reflected in the Utility's calculation under Section 2.2 for the next the next monthly payment made ~~Delivery Year~~ following the resolution of the Dispute.

II. Security Agreement

Changes to ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

"Letter of Credit" means an irrevocable, transferable standby letter of credit from a Qualified Institution, satisfactory to the Secured Party in form and substance: (i) having a term extending through the end of the Secured Delivery Year with respect to which the Letter of Credit is established and an evergreen clause acceptable to Secured Party; (ii) in the amount of Grantor's aggregate payment obligation to Secured Party under Section 4.1.2 of the SOCA during the applicable Secured Delivery Year or otherwise defaults under the SOCA during such Secured Delivery Year; and (iii) providing that Secured Party shall have been permitted to draw upon the Letter of Credit if Grantor fails to make any payment due to Secured Party under Section 4.1.2 of the SOCA during the applicable Secured Delivery Year on the applicable Payment Date. In the event the institution that

issues the Letter of Credit no longer satisfies the requirements for a Qualified Institution during the term of the Letter of Credit, Grantor shall have ~~five~~ ten (10~~5~~) Business Days following written notice from Secured Party to post a new Letter of Credit from a Qualified Institution. In the event Grantor's interests under the SOCA are transferred to a permitted assignee or successor-in-interest, Grantor shall cooperate with Secured Party to amend, restate, and/or replace the Letter of Credit, as necessary.

"Qualified Institution" means a commercial bank or trust company with (i) a Credit Rating of at least (a) "A" by Standard & Poor's Rating Group (or its successor) and "A2" by Moody's Investors Service (or its successor), if such entity is rated by both rating agencies or (b) A" by Standard & Poor's Rating Group (or its successor) and "A2" by Moody's Investors Service (or its successor), if such entity is rated by one rating agency but not the other; and (ii) having a capital surplus of at least $~~10~~1,000,000,000.

Changes to ARTICLE II GRANT OF SECURITY INTEREST

2.1 The Grantor hereby pledges, assigns and grants to the Secured Party, for the benefit of the Secured Party, a first priority continuing security interest in, lien on and right of set-off against all of its right, title and interest in, to and under (all of the following, (collectively, the "Collateral"):

(i) any and all payments owed by Secured Party to Grantor under the SOCA in a Delivery Year (the "Current Delivery Year") to the extent to which Grantor has any payment obligation to Secured Party under Section 4.1.2 of the SOCA in respect of the Secured Delivery Year;

(ii) in the event the payments that Secured Party owes to Grantor under the SOCA in the Current Delivery Year are less than the payment obligation of Grantor to Secured Party under Section 4.1.2 of the SOCA in respect of the Secured Delivery Year, then any and all payments owed to Grantor by PJM in respect of Grantor's supply of unforced capacity in RPM during the Secured Delivery Year (the "PJM Receivables") to the extent that such payments exceed the amount of the SOCP; and

(iii) the Collateral Account and all interest earned on amounts in the Collateral Account;

~~(iv) [all Documents, including complete and accurate copies of all documents related to the Collateral, whether or not physically delivered to the Secured Party pursuant to this Security Agreement;] and~~

~~(v) and all accessions to, substitutions for and replacements, proceeds of any kind (including any distributions, payments or other assets exchanged for or received on account of the foregoing), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;~~

to secure the prompt and complete payment and performance of the Secured Obligations.

2.2 The Secured Obligations shall be subordinate in right of payment, priority and remedies only to the interests of Grantor's lenders. In connection with the foregoing, Secured Party agrees to negotiate in good faith any subordination or intercreditor agreements, as may be reasonably requested by Grantor's lenders ("Lender Intercreditor Agreements"). The Lender Intercreditor Agreements shall be in form and substance reasonably agreed to by Secured Party, Grantor and Grantor's lenders and shall include, among others, the following provisions:

(a) So long as any obligations to its lenders are outstanding, Grantor shall not make or cause to be made, and Secured Party shall not demand, accept or receive, directly or indirectly, any payment (in cash, property, by set-off or otherwise) on or with respect to the Secured Obligations and Documents.

(b) So long as any obligations to Grantor's lenders are outstanding, Secured Party shall not:

(i) commence or join (unless any of the lenders commence or join) in any proceeding against the Grantor under any federal or state bankruptcy, reorganization, insolvency, readjustment of debt, rearrangement of debt, receivership or liquidation law or statute; or

(ii) exercise any remedies under, or in respect of, the Secured Obligations or the Documents, or commence a proceeding in respect of the Secured Obligations or the Documents, or to enforce a payment or a lien or collect on payment in respect of the Secured Obligations or the Documents.

Changes to Article III DEPOSIT OF PAYMENTS IN CURRENT DELIVERY YEAR

3.1 Amounts Owed by Grantor in Current Delivery Year. Except as provided in Section 3.4, if, with respect to any Current Delivery Year, Grantor is obligated to make any payments to Secured Party under Section 4.1.2 of the SOCA in the Secured Delivery Year, at Grantor's request, in its sole discretion, the Secured ~~Party has the right to~~ will deposit in the Collateral Account any amounts which Secured Party owes to Grantor in such Current Delivery Year under Section 4.1.1 of the SOCA, up to, in the aggregate, the aggregate amount which Grantor owes Secured Party in such Secured Delivery Year. Secured Party is deemed to fulfill its obligations under Section 4.1.1 of the SOCA for such Current Delivery Year to the extent it deposits amounts in accordance with the preceding sentence. If the aggregate obligations of Secured Party to Grantor in the Current Delivery Year are less than the aggregate obligations of Grantor to Secured Party in the related Secured Delivery Year (including any Secured Delivery Year in which Grantor has no such payment obligations), the Grantor shall direct and authorize PJM to remit to Secured Party, for deposit in the Collateral Account, in immediately available funds the portion of any payments that PJM owes to Grantor in respect of Grantor's supply of unforced capacity in RPM during the Secured Delivery Year equal to such deficit.

3.2 Excess Amounts in the Collateral Account. To the extent Grantor has paid in full all amounts owed by it under Section 4.1.2 of the SOCA for a Delivery Year, Grantor shall be entitled to the remittance of all amounts deposited in the Collateral Account ~~to secure Grantor's obligations in respect of such Delivery Year, subject to Section 3.3~~.

3.3 Determination of Amounts in the Collateral Account. Determination of amounts required to be deposited and held in the Collateral Account shall be made on a ~~Delivery Year by Delivery Year~~quarterly basis. ~~Unless specified otherwise in this Agreement~~At Grantor's request, in its sole discretion, amounts to be remitted to Grantor under Section 3.2 shall be netted against amounts to be deposited by Grantor under Section 3.1. Only the excess or deficit resulting from such netting shall be transferred to or from the Collateral Account, as the case may be.

3.5. Alternative Security. No deposits shall be made in the Collateral Account with respect to a Secured Delivery Year if, prior to the commencement of any calendar quarter during the Current Delivery Year ~~that begins after PJM conducts the BRA for such Secured Delivery Year~~, Grantor provides security to Grantor in the form of a Letter of Credit from a Qualifying Institution in the amount of Grantor's payment obligation to Secured Party under Section 4.1.2 of the SOCA in respect of such Secured Delivery Year, *provided that* Grantor shall be permitted to replace such Letter of Credit by deposit made in the Collateral Account with respect to a Secured Delivery Year prior to the commencement of any calendar quarter during the Current Delivery Year pursuant to Section 3.1 of this Agreement.

Changes to ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

6.1 Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default hereunder[and for purposes of Section 7.1.10 of the SOCA]:

* * * *

(d) [(i) The Grantor shall cease to hold valid and properly perfected title to and sole record and beneficial ownership in the Collateral or (ii)] the Secured Party shall cease to hold a valid first priority, perfected lien in the Collateral or any of the Grantor or a member of the Parent Group **[define]** shall assert that such lien is not a valid first priority perfected lien;

(e) If, in any Current Delivery Year in which the Secured Party has notified PJM that the PJM Receivables should be transmitted to the Collateral Account, PJM transmits the PJM Receivables to the Grantor and the Grantor does not promptly transfer funds in the amount of such PJM Receivables to the Collateral Account; or

~~(f) The Grantor shall amend its certificate of formation or limited liability company agreement without the express prior written consent of the Secured Party; or~~

6.2 Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, the Secured Party may exercise, ~~without notice~~upon two (2) business days notice, any or all of the following rights and remedies:

* * *

(b) Until the Secured Party is able to effect a sale, lease, or other disposition of the Collateral, the Secured Party shall have the right to hold or use the Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving the Collateral or its value or for any other purpose deemed appropriate by the Secured Party. ~~The Secured Party may, if it so elects, seek the appointment of a receiver or keeper to take possession of the Collateral and to enforce any of the Secured Party's remedies (for the benefit of the Secured Party), with respect to such appointment without prior notice or hearing as to such appointment.~~

Changes to ARTICLE VII ATTORNEY-IN-FACT; PROXY

7.1 Authorization for Secured Party to Take Certain Action.

a) The Grantor irrevocably authorizes the Secured Party at any time and from time to time in the sole discretion of the Secured Party and appoints the Secured Party as its attorney in fact (i) to execute on behalf of the Grantor as debtor and to file financing statements necessary or desirable in the Secured Party's sole discretion to perfect and to maintain the perfection and priority of the Secured Party's security interest in the Collateral, (ii) to endorse and collect any cash or other proceeds paid or made in respect of the Collateral, (iii) to file any other financing statement or amendment of a financing statement in such offices as the Secured Party in its sole discretion deems necessary or desirable to perfect and to maintain the perfection of the Secured Party's security interest in the Collateral, ~~(iv) to market, liquidate, sell, transfer or otherwise dispose of the Collateral at any time following the occurrence and continuation of [Event of Default]; *provided that* the Secured Party shall use commercially reasonable efforts in completing any such liquidation; and *provided further that* the Secured Party shall have no liability with respect to the amount of proceeds realized, and other terms of sale obtained, in connection with the liquidation, sale or transfer of the Collateral, (v) to settle, adjust or compromise the Collateral, (vi) to settle, adjust or compromise any legal proceedings relating to the Collateral, (vii) to prepare, file and sign the Grantor's name on any notice of lien, assignment or satisfaction of lien or similar document in connection with the Collateral, (viii) to change the address for delivery of mail addressed to the Grantor to such address as the Secured Party may designate and to receive, open and dispose of all mail addressed to the Grantor,~~ and (~~ix~~iv) to do all other acts and things necessary to carry out this Security Agreement, including but not limited to any filings described in Section 6.3(b)(ii); ~~and the Grantor agrees that it will reimburse the Secured Party promptly for any payment made or any expense incurred by the Secured Party in connection with any of the foregoing (the "Reimbursement Amount") and the Secured Party may deduct the Reimbursement Amount from proceeds of sale or liquidation of the Collateral;~~ *provided that* this authorization shall not relieve the Grantor of any of its obligations under this Security Agreement or under the SOCA.

7.2 PROXY. THE GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE SECURED PARTY AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 7.1 ABOVE) WITH RESPECT TO ITS COLLATERAL,

INCLUDING THE RIGHT TO VOTE SUCH COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. ~~IN ADDITION TO THE RIGHT TO VOTE ANY SUCH COLLATERAL, THE APPOINTMENT OF THE SECURED PARTY AS PROXY AND ATTORNEY IN FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH COLLATERAL WOULD BE ENTITLED.~~ SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH COLLATERAL ON THE RECORD BOOKS OF ANY PERSON) BY ANY PERSON, UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT HEREUNDER.

Changes to ARTICLE VIII GENERAL PROVISIONS

8.3 Specific Performance of Certain Covenants. The Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections [5.1(g), 5.2, 5.3, 5.4, ~~5.8,~~ 6.3, 7.1 or 8.4], will cause irreparable injury to the Secured Party that the Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Secured Party to seek and obtain specific performance of other obligations of the Grantor contained in this Security Agreement, that the covenants of the Grantor contained in the Sections referred to in this Section 8.3 shall be specifically enforceable against the Grantor.

8.14 Cooperation. Secured Party shall reasonably cooperate to arrange for the delivery of such documents and certificates (in a form reasonably acceptable to Secured Party, including exclusions, assumptions and caveats) as may be reasonably necessary in order for Grantor to consummate any financing or refinancing of the Capacity Facility.