

Station 43 Substation NWA Agreement

dated as of Month, Day, Year

between

Developer

and

Rochester Gas & Electric Corporation

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RELIABILITY SUPPORT SERVICES AGREEMENT

Pursuant to the rates, terms and conditions of this Station 43 Substation NWA Agreement (this "Agreement"), dated as of Month, Day, Year (the "Effective Date"), Developer shall provide reliability support services to Rochester Gas & Electric Corporation ("RG&E") from the Developer's Facility (as defined below).

RECITALS

WHEREAS, RG&E conducted a solicitation seeking non-wire alternatives to the Station 43 Substation wires project;

WHEREAS, Developer was a successful bidder in response to RG&E's solicitation;

WHEREAS, the PSC has accepted this Agreement and provided RG&E with complete and immediate recovery of the costs associated with this Agreement;

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

ARTICLE I DEFINITIONS

1.1 Definitions. Unless otherwise stated in this Agreement, the following terms shall have the following meanings:

"**Agreement**" shall have the meaning set forth in the Preamble.

"**Applicable Laws**" shall mean all applicable provisions of all constitutions, treaties, statutes, laws (including the common law), rules, regulations, ordinances, and codes and any order, writ, injunction, decree, judgment, award, decision or determination of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency, authority or instrumentality.

"**Applicable Revenues**" shall mean any Energy, Capacity and Ancillary Service Revenues associated with the output from the facility

"**Confidentiality Agreement**" shall have the meaning set forth in Section 10.13.

"**Developer**" shall have the meaning set forth in the Preamble.

"**Effective Date**" shall have the meaning set forth in the Preamble.

"**Environmental Laws**" shall mean any and all federal, state, or local, statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other

governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of hazardous materials or wastes into surface water, ground water or land, or (iv) the manufacturing, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials or wastes or the cleanup or other remediation thereof.

“**EPT**” shall mean the prevailing time in the eastern time zone of the United States.

“**Facility**” shall have the meaning set forth in the Preambles.

“**FERC**” shall mean the Federal Energy Regulatory Commission.

“**Force Majeure Event**” shall have the meaning set forth in Section 7.1(a).

“**Force Majeure Outage**” shall mean the condition, other than during any period of Planned Outage or Unplanned Outage, in which due to a Force Majeure Event the Facility is unavailable or available at an hourly average capacity level that is less than its contracted output.

“**Force Majeure Performance Adjustment**” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.

“**FPA**” shall mean the Federal Power Act.

“**GAAP**” shall mean the generally accepted accounting principles in the United States, as in effect from time to time.

“**Good Utility Practice**” shall mean any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice or method, or act to the exclusion of all others, but rather to delineate acceptable practices, methods, or acts generally accepted in the region. Without limitation of the foregoing, “Good Utility Practices” shall include the applicable operating policies, standards, criteria, practices and/or guidelines of FERC, NERC, NYISO, NYSRC, NPCC, and any Governmental Authority, including those practices required by FPA Section 215(a)(4).

“**Governmental Authority**” shall mean the government of any nation, state or other political subdivision thereof, including any entity lawfully exercising executive, military, legislative, judicial, regulatory, or administrative functions of or pertaining to a government, including FERC, NERC, NYSRC, and NPCC.

“**Interconnection Agreement**” means the Interconnection Agreement, dated MM/DD/YYYY, as amended, restated or supplemented, between RG&E and Developer.

“**Interest Rate**” shall have the meaning set forth in Exhibit 1.

“**Market or Regulatory Change**” shall mean any action by the NYPSC, FERC or any successor Governmental Authority or the NYISO that is not subject to a stay and would cause supplemental capacity payments or other additional payments, revenues or credits to be provided with respect to the Facility due to the Facility being deemed to run partly or wholly for the benefit of additional constituencies (e.g., the State of New York or the region) and not exclusively for the benefit of RG&E’s customers.

“**Monthly Fixed Amount**” shall mean \$\$\$\$ for each month during the Term, as such amounts may be adjusted in accordance with Section 4.1.

“**NERC**” shall mean the North American Electric Reliability Corporation.

“**NPCC**” shall mean the Northeast Power Coordinating Council, Inc.

“**NYISO**” shall mean the New York Independent System Operator, Inc., or successor organization charged with operating the transmission system and markets in the State of New York.

“**NYISO Day-Ahead Energy Market**” shall mean the NYISO-administered day-ahead energy market.

“**NYISO ICAP Spot Market Auction**” shall mean the “ICAP Spot Market Auction” as defined in the NYISO Tariffs.

“**NYISO Outage Scheduling Manual**” shall mean the “Outage Scheduling Manual” published by the NYISO.

“**NYISO Tariffs**” shall mean, collectively, the published tariffs of the NYISO, including the Open Access Transmission Tariff and the Market Administration and Control Area Services Tariff, as such tariffs may be amended by the NYISO.

“**NYPSC**” shall have the meaning set forth in the Recitals.

“**NYSRC**” shall mean the New York State Reliability Council, L.L.C.

“**Party**” shall mean either Developer or RG&E. “**Parties**” means both Developer and RG&E.

“**Planned Outage**” shall mean a planned interruption, in whole or in part, in the electrical output of the Developer’s Facility to permit Developer to perform maintenance and repair of the Facility, pursuant to the process for providers and suppliers of installed capacity set forth in the NYISO Tariffs and NYISO Outage Scheduling Manual.

“**Reliability Support Services**” shall mean the services required to be provided by Developer to RG&E pursuant to this Agreement and shall include but not be limited to Developer (a) keeping the Facility available, capable of being committed and operating

for reliability purposes as requested by RG&E or the NYISO, (b) offering the Facility's energy into the NYISO Day-Ahead Energy Market and capacity into NYISO ICAP Spot Market Auctions, and (c) providing reactive power consistent with the capability of the Facility pursuant to the Interconnection Agreement and the procedures specified under voltage support service provisions of the NYISO Tariffs.

“**RFP**” shall have the meaning set forth in the Recitals.

“**RG&E**” shall have the meaning set forth in the Preamble.

“**Staff**” shall mean the staff of the New York State Department of Public Service.

“**Term**” shall have the meaning set forth in Section 2.1(a).

“**Unplanned Outage**” shall mean the condition, other than during any period of Planned Outage or Force Majeure Outage, in which due to unanticipated failure the Developer's facility is unavailable or available at an hourly average capacity level that is less than contracted output.

“**Unplanned Outage Performance Adjustment**” shall mean, for a given hour in a month, an amount equal to the pro-rata portion of the Monthly Fixed Payment, equivalent to the ratio of one (1) hour to the total amount of hours in such month.

ARTICLE II CONDITIONS TO PAYMENT OBLIGATIONS; TERM; SURVIVAL OF OBLIGATIONS

2.1 Term

- (a) Reliability Support Services shall be provided commencing at the start of the hour ending 0100 EPT on MM/DD/YYYY and remain in effect through hour ending 2400 EPT on MM/DD/YYYY, unless the Agreement is otherwise terminated pursuant to Section 9.1 (the “Term”).
- (b) This Agreement shall be effective as of the Effective Date and no provision of this Agreement shall terminate earlier than the expiration of the Term, except as relating to Termination for Default (Section 9.1).

2.2 Survival of Obligations

Notwithstanding the termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement that by their nature are intended to, and shall, survive such termination.

**ARTICLE III
OBLIGATIONS AND OPERATIONS**

3.1 Scheduling and Bidding

- (a) Developer shall cause the Facility to be fueled, operated and maintained in accordance with Good Utility Practice and the NYISO Tariffs and with due regard for the reliability purpose of this Agreement.
- (b) Developer shall interface and comply with NYISO scheduling deadlines and requirements for maintaining the Facility as eligible energy, capacity and ancillary services providers, as well as comply with the NYISO's dispatch instructions and the Interconnection Agreement. The Parties acknowledge that the Reliability Support Services shall not include the purchase by RG&E of any physical energy-related products or services (energy, capacity or ancillary services).

3.2 Energy, Capacity and Ancillary Services

- (a) Developer shall at all times bid the Facility in compliance with NYISO market rules.
- (b) Developer shall offer the full amount of the Facility's expected hourly output into the NYISO Day-Ahead Energy Market subject to compliance with NYISO market rules. Developer shall comply with any dispatch instruction issued by the NYISO under established NYISO protocols or by RG&E under the Interconnection Agreement; to the extent such dispatch instructions are consistent with the operating parameters of the Facility and are in accordance with the NYISO Tariffs.
- (c) Developer shall offer the Facility's capacity into the NYISO ICAP Spot Market Auction; such offers shall be subject to compliance with NYISO market rules.
- (d) Developer shall offer ancillary into the NYISO subject to compliance with NYISO requirements.
- (e) Developer (or its affiliates with respect to any portion of the Facility owned by affiliates of Developer) shall be solely responsible, without contribution from RG&E, for any penalties, fines or imbalance charges that relate to the bidding, scheduling and operation of the Facility or the operations of the Facility.
- (f) Each Party shall bear its own bad debt losses under the NYISO Tariffs.

3.3 Operating Characteristics and Environmental Compliance

Developer shall have no obligation to cause the Facility to be operated in a manner that would be inconsistent with or in violation of the NYISO Tariffs, NERC, NPCC or NYSRC rules or would cause Developer to violate the terms of any applicable environmental regulations,

restrictions, orders or decrees or any operating permit, which determination shall be made by Developer in its reasonable discretion. Developer shall have the obligation to ensure that the Facility is operated in accordance with the NYISO Tariffs, NERC, NPCC or NYSRC rules and consistently with the terms of any applicable environmental regulations, restrictions, orders or decrees or any required operating permits.

ARTICLE IV PRICING

4.1 Monthly Fixed Amount

The billing period during the Term shall be each calendar month. Not later than the twentieth (20th) day of each month, Developer shall prepare and provide to RG&E an invoice showing for the preceding month the Monthly Fixed Amount, any Unplanned Outage Performance Adjustments, any Force Majeure Event Performance Adjustments and any other amounts payable by either Party under this Agreement, together with reasonable documentation supporting the invoiced amounts. Unless subject to dispute pursuant to Section 9.1 of this agreement, within 10 days of receipt of the invoice, RG&E shall pay Developer the invoiced amount.

4.2 Capital Expenditures and Operating Costs

In consideration of the Monthly Fixed Amount, Developer shall be responsible, at its sole cost and without additional payment from RG&E, for all capital expenditures and operating costs (including fuel), whether or not currently anticipated, required to operate and maintain the Facility in accordance with Good Utility Practice, including, but not limited to any capital expenditures or operating costs (including fuel) attributable to the enactment of any Applicable Laws, or any changes in existing Applicable Laws, after the date hereof.

4.3 Billing and Payment

Billing and payment terms for invoices issued under Sections 4.1 shall be as set forth in Exhibit 1.

4.4 Other Costs

Each Party shall bear its own attorneys' and consultants' fees incurred in connection with the preparation, negotiation, regulatory approval and administration of this Agreement.

4.5 Books and Records

RG&E shall have the right to reasonable access to, review of, and audit of Developer's books and records as well as perform site visits for the purpose of proper administration of this Agreement.

ARTICLE V
OUTAGES AND MAINTENANCE; ACCESS

5.1 Planned Outages

- (a) Developer shall provide to RG&E a detailed major outage plan and schedule involving maintenance or restoration of the Facility from a Planned Outage. Upon reasonable notice to RG&E, Developer may alter the commencement and/or completion dates for Planned Outages.
- (b) Developer shall be permitted to take the Facility out of operation, or reduce the capability of the Facility, during Planned Outages as permitted by the NYISO Tariffs and policies and the Interconnection Agreement.
- (c) Developer shall provide RG&E a monthly report on the tenth (10th) business day of each successive month of the Term on the current and projected operating status of the Facility and any upcoming items of note, including any forecasted changes to the Planned Outage schedule.

5.2 Unplanned Outages

In the event of an Unplanned Outage, Developer shall notify RG&E, pursuant to established practice under the NYISO Outage Scheduling Manual, of the nature and expected duration of such Unplanned Outage as soon as practicable and shall keep RG&E timely advised of any developments associated with such Unplanned Outage and the estimated timing of the return of the Facility to full capability. Developer shall use commercially reasonable efforts to remedy and to mitigate the consequences of an Unplanned Outage as soon as reasonably practicable. An Unplanned Outage that occurs and continues for a period of fifteen (15) consecutive days or more shall be considered a failure to perform a material obligation under this Agreement by Developer that is subject to termination for default pursuant to Section 9.1.

5.3 Unplanned Outage Performance Adjustment

- (a) Developer's failure to return the Facility to service from a Planned Outage within the allotted duration set forth shall result in the excess hours associated with such Planned Outage being treated as an Unplanned Outage and the application of the Unplanned Outage Performance Adjustment as set forth in Section 5.3(b) below, but shall not be deemed a failure to perform a material obligation under this Agreement under Section 9.1 unless Developer fails to exercise Good Utility Practices and act in accordance with the NYISO Tariffs in returning the Facility to service.
- (b) For each hour (or portion thereof) of an Unplanned Outage that exceeds a total of 168 hours for a calendar year (pro-rated for any partial years) during the Term, an Unplanned Outage Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

6.1 Representations and Covenants of Developer

Developer hereby represents and warrants to RG&E as of the Effective Date and covenants to RG&E that:

- (a) Developer is a _____ duly organized, validly existing and in good standing under the laws of _____. Developer has full limited liability company power and authority to own and lease all of the properties and assets it now owns and leases and to carry on its business as now being conducted. To the knowledge of Developer, Developer is in substantial compliance with Applicable Laws.
- (b) Developer has full power and authority ([corporate] and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which Developer is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by Developer of this Agreement and the operative documents, and the consummation of the transactions will not violate Developer's organizational documents or other obligations, and no other proceedings on the part of Developer are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by Developer and constitutes the legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). Developer shall take, and cause to be taken, all action that is necessary for Developer to complete the actions to be completed by Developer pursuant to this Agreement.
- (c) There are no known issues, defects, problems or other issues involving or related to the ownership and/or operation of the Facility and the Facility as a whole that would preclude or prevent Developer from fully performing its duties and obligations in accordance with this Agreement.
- (d) No citations, fines, or penalties have been asserted against Developer under any Environmental Law or by the regulatory authority or jurisdiction in which Developer operates. Developer has not received notice (verbal or written) of, nor is it aware of, any person making allegations that all or any part of the Facility or the Facility as a whole, or the use, operation or ownership thereof, are in violation of any applicable Environmental Law.

- (e) Developer shall keep in force throughout the duration of the Term policies of insurance related to the Facility of the types and in the amounts set forth in Exhibit 2.
- (f) Developer is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by Developer before or coincident with the Effective Date.

6.2 Representations and Covenants of RG&E

RG&E hereby represents and warrants to Developer as of the Effective Date and covenants that:

- (a) RG&E is a corporation duly organized, validly existing and in good standing under the laws of the State of New York, with full corporate power and authority to own property and carry on its business as now being conducted.
- (b) RG&E has full power and authority (corporate and otherwise) to execute, deliver and perform this Agreement (including execution, delivery and performance of the operative documents to which RG&E is a party) and to consummate the transactions contemplated herein, subject to the conditions set forth in this Agreement. The execution and delivery by RG&E of this Agreement and the operative documents, and the consummation of the transactions will not violate RG&E's organizational documents or other obligations, and no other corporate proceedings on the part of RG&E are necessary with respect thereto and no additional consents or approvals other than those provided for herein are required. This Agreement has been duly and validly executed and delivered by RG&E and constitutes the legal, valid and binding obligation of RG&E enforceable against RG&E in accordance with its terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, or by general equitable principles (regardless of whether enforcement is considered in a proceeding at law or in equity). RG&E shall take, and cause to be taken, all corporate action that is necessary for RG&E to complete the actions to be completed by RG&E pursuant to this Agreement.
- (c) RG&E is in compliance with or has performed all agreements, representations and warranties, and conditions in this Agreement that are required to be performed and complied with by RG&E before or coincident with the Effective Date.

ARTICLE VII FORCE MAJEURE EVENTS

7.1 Force Majeure Event

- (a) Any delay or failure in the performance by a Party, other than payment of undisputed amounts, shall be excused if and to the extent caused by the

occurrence of a Force Majeure Event. A “Force Majeure Event” means acts of God, fires, floods, explosion, riots, wars, unusually inclement weather, sabotage, vandalism, terrorism, terroristic acts, restraint of government, governmental acts, changes in laws, regulations or orders or injunctions, labor strikes, breakage or accident of machinery or equipment resulting from an event or circumstance that would otherwise constitute a Force Majeure Event hereunder, and other like events or circumstances that are beyond the reasonable control of the Party affected thereby, despite such Party’s commercially reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party’s negligence or failure to perform its obligations under this Agreement. In no event shall “Force Majeure Event” include economic hardship of any kind.

- (b) RG&E’s obligation to pay Developer the Monthly Fixed Amount shall not be affected by the occurrence of a Force Majeure Event, but the amount of the Monthly Fixed Amount may be adjusted for a Force Majeure Outage pursuant to this Section 7.1(b). For each hour (or portion thereof) of a Force Majeure Outage (other than due to a Force Majeure Event with respect to the transmission or distribution systems of RG&E or by equipment owned by RG&E) that exceeds a total of one hundred sixty eight (168) hours per year for the Term, a Force Majeure Performance Adjustment amount shall be credited against the Monthly Fixed Amount on the monthly invoice that is issued for the month in which such hour occurs.
- (c) The Party unable to perform by reason of a Force Majeure Event shall use commercially reasonable efforts to remedy its inability to perform and to mitigate the consequences of the Force Majeure Event as soon as reasonably practicable; provided that (i) no Party shall be required to settle any strike, walkout, lockout, or other labor dispute on terms which, in the Party’s sole discretion, are contrary to its interests and (ii) the Party unable to perform shall, as soon as practicable, advise the other Party of the reason for its inability to perform, the nature of any corrective action needed to resolve performance, and its efforts to remedy its inability to perform and to mitigate the consequences of its inability to perform and shall advise the other Party of when it estimates it will be able to resume performance of its obligations under this Agreement.

ARTICLE VIII LIMITATIONS OF LIABILITY

8.1 Indemnification, Limitation of Liability

- (a) Each Party shall release, indemnify and hold harmless the other Party and its directors, managers, officers, agents, contractors, sub-contractors and representatives against and from any and all loss, claims, actions or suits, including costs and attorneys’ fees, both at trial and on appeal, resulting from, or arising out of or in any way, the negligence or willful misconduct related to this Agreement or breach of this Agreement of the indemnifying Party and its

directors, managers, officers, agents, contractors, sub-contractors and representatives, including, but not limited to, any loss, claim, action or suit, for or on account of injury or death of persons, or for damage to, or destruction or economic loss of, property, excepting only such loss, claim, action or suit as may be caused solely by the negligence or willful misconduct or breach of this Agreement of the Party seeking indemnification or its directors, managers, officers, agents, contractors, sub-contractors or representatives.

- (b) Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public.
- (c) Neither Party shall be liable to the other for incidental, consequential, special, indirect, multiple or punitive damages, loss of revenue, profits, fees or costs arising out of, or connected in any way to the performance or non-performance of a Party under this Agreement, whether arising from contract, tort (including negligence), strict liability or otherwise, unless such damages are the result of a Party's gross negligence or willful misconduct and except as may be included in the calculation of Unplanned Outage Performance Adjustments or Force Majeure Event Performance Adjustments.

ARTICLE IX REMEDIES

9.1 Termination for Default

- (a) If any Party shall fail to perform any material obligation imposed on it by this Agreement, and that obligation has not been suspended pursuant to the terms of this Agreement, the other Party, at its option, may terminate this Agreement by giving the Party in default written notice setting out specifically the circumstances constituting the default and declaring its intention to terminate this Agreement. If the Party receiving the notice does not within thirty (30) days after receiving the notice, remedy the default, the Party not in default shall be entitled by a further written notice to terminate this Agreement; provided that, if the default is reasonably expected to take more than thirty (30) days to remedy, the defaulting Party shall notify the non-defaulting Party of its plan for remedying the default and must take actions to begin remedying the default within thirty (30) days. The Party not in default shall have a duty to mitigate damages. Notwithstanding anything to the contrary in this Section 9.1, termination of this Agreement pursuant to this Section 9.1 shall be without prejudice to the right of any Party to collect any amounts due to it prior to the time of termination.
- (b) Any NERC penalties assessed to RG&E as result of the Developer's default under this Agreement shall be paid by Developer to RG&E. Developer may be required

by RG&E to provide an appropriate credit instrument to support Developer's compliance with this Section 9.1(b).

9.2 Waiver

The failure to exercise any remedy or to enforce any right provided in this Agreement or Applicable Law shall not constitute a waiver of such remedy or right or of any other remedy or right. A Party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the Party against whom such waiver is to be enforced.

9.3 Beneficiaries

Except as is specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, confers any rights or remedies under, or by reason of, this Agreement on any persons other than the Parties and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligations or liability of any third-party, nor give any third-person any rights of subrogation or action against any Party.

ARTICLE X MISCELLANEOUS PROVISIONS

10.1 Milestone Payments

Developer may be required to post milestone payments to ensure compliance with the projected development schedule.

10.2 Assignment

Neither Party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that, upon the occurrence of a Market or Regulatory Change, RG&E may assign this Agreement to one or more parties that are the beneficiaries identified in the appropriate Governmental Authority's or NYISO's determination of benefits, subject to Developer's approval of such party's creditworthiness, which shall not be unreasonably withheld, conditioned or delayed and need not be equivalent to RG&E's creditworthiness. Any such assignment or delegation made without such written consent shall be null and void. Upon any assignment made in compliance with this section, the assigning Party shall be relieved of liability under this Agreement and this Agreement shall inure to and be binding upon the successors and assigns for the assigning Parties. Without limiting the foregoing, Developer may not sell or transfer the assets comprising substantially all of the Facility unless the purchaser or transferee agrees in writing with RG&E to assume all rights, obligations and liabilities under this Agreement.

10.3 Notices and Correspondence

Except as otherwise expressly provided in this Agreement, permitted by NYISO rules or required by law, all invoices, notices, consents, requests, demands, approvals, authorizations and other communications provided for in this Agreement shall be in writing and shall be sent by

email, followed by personal delivery, certified mail, return receipt requested, facsimile transmission, or by recognized overnight courier service, to the intended Party at such Party's address set forth below. All such notices shall be deemed to have been duly given and to have become effective: (i) upon receipt if delivered in person or facsimile; (ii) two (2) days after having been delivered to a courier for overnight delivery; or (iii) seven (7) days after having been deposited in the United States mail as certified or registered mail, return receipt requested, all fees pre-paid, addressed to the applicable addresses set forth below. Each Party's address for notices shall be as follows (subject to change by notice in accordance with the provisions of this Section):

TO DEVELOPER:

Name
Address
Address
Attention:
Email Address:
Telephone No.:
Facsimile No.:

TO RG&E:

RG&E
James A. Carrigg Center, 18 Link Drive
P.O. Box 5224
Binghamton, New York 13902-5224
Attention: David J. Kimiecik, Vice President - Energy Services
Email Address: djkimiecik@nyseg.com
Telephone No.: (607) 762-8701

with a copy to:

Iberdrola USA Management Corporation
99 Washington Ave, Suite 2018
Albany, NY 12210
Attention: Noelle Kinsch, General Counsel, Avangrid Networks
Email Address: noelle.kinsch@iberdrolausa.com
Telephone No.: (518) 434-4977

10.4 Parties' Representatives

Each Party to this Agreement shall ensure that throughout the Term duly appointed representatives are available for communications between the Parties. The representatives shall have full authority to deal with all day-to-day matters arising under this Agreement. Developer and RG&E shall be entitled to assume that the duly appointed representatives of the other Party are at all times acting within the limits of the authority given by the representatives' Party.

10.5 Taxes

- (a) Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement insofar as it applies to the Reliability Support Services in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts. If any of the transactions hereunder are to be exempted from or not subject to any particular taxes, the Parties shall cooperate in good faith to promptly provide each other with all necessary documentation to evidence and qualify for such exemption.
- (b) RG&E shall pay or cause to be paid all taxes, if any, on or with respect to the sale of the Reliability Support Services (other than ad valorem, franchise or income taxes, or similar taxes measured by or based upon net income, which are related to the sale of the Reliability Support Services and are, therefore, the responsibility of Developer). In the event Developer is required by Applicable Law to remit or pay taxes which are RG&E's responsibility hereunder, RG&E shall promptly reimburse Developer for such taxes. If RG&E is required by Applicable Law to remit or pay taxes which are Developer's responsibility hereunder, RG&E may deduct the amount of any such taxes from the sums due to Developer under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under Applicable Law.

10.6 Independent Parties

Nothing contained herein shall constitute the Parties as joint venturers, partners, employees or agents of one another, and neither Party shall have the right or power to bind or obligate the other. Nothing herein will be construed as making either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party.

10.7 Choice of Law

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New York, excluding any choice of law provisions or rules which may direct the application of the laws of another jurisdiction.

10.8 Effect of Invalidation, Modification, or Condition

Each covenant, condition, restriction, and other term of this Agreement is intended to be, and shall be construed as, independent and severable from each other covenant, condition, restriction, and other term. If any covenant, condition, restriction, or other term of this Agreement is held to be invalid or otherwise modified or conditioned by any Governmental Authority or the NYISO, the invalidity, modification, or condition of such covenant, condition,

restriction, or other term shall not affect the validity of the remaining covenants, conditions, restrictions, or other terms hereof. If an invalidity, modification, or condition has a material impact on the rights and obligations of the Parties, the Parties shall make a good faith effort to renegotiate and restore the benefits and burdens of this Agreement as they existed prior to the determination of the invalidity, modification, or condition. If the Parties fail to reach agreement, then the Party whose rights and obligations have been adversely affected may, in its sole discretion, terminate this Agreement.

10.9 Amendments

Any amendments or modifications of this Agreement shall be made only in writing and duly executed by the Parties to this Agreement. Such amendments or modifications shall become effective only after the Parties have received any authorizations required from FERC for the amendment or modification. The Parties agree to negotiate in good faith any amendments to this Agreement that are needed to reflect the intent of the Parties as expressed herein and to reflect any changes to the design of the New York markets that are approved by FERC from time to time.

10.10 Dispute Resolution

Except where otherwise provided for in this Agreement, disputes under this Agreement shall be submitted to representatives of each Party for resolution. If the dispute remains unresolved after forty-five (45) days, either Party may pursue any legal remedies available to it by law.

10.11 Injunctive Relief

In addition to any other remedy to which a Party may be entitled by reason of the other Party's breach of this Agreement, the Party not in default shall be entitled to seek temporary, preliminary and permanent injunctive relief from any court of competent jurisdiction restraining the other Party from committing or continuing any breach of this Agreement.

10.12 Entire Agreement

This Agreement consists of the terms and conditions set forth herein, as well as the Exhibits hereto, which are incorporated by reference herein and made a part hereof. This Agreement contains the entire agreement between the Parties with respect to the matters set forth herein and supersedes all prior negotiations, undertakings, agreements and business term sheets.

10.13 Confidentiality

Information provided by any Party to the other pursuant to this Agreement may, at the Party's discretion, be provided subject to the terms of the Confidentiality Agreement dated MM/DD/YYYY, between Developer, and RG&E ("Confidentiality Agreement"). RG&E may disclose information provided under Section 4.6 to the NYPSC and Staff pursuant to regulatory requests received in the ordinary course of RG&E's business, and shall use at least the same degree of care (which in no event shall be less than reasonable care) in connection with demands or requests for the disclosure of any confidential information of Developer as RG&E uses to

protect its own similar confidential information in connection with similar regulatory requests. Disclosure of such information pursuant to regulatory requests not received in the ordinary course of business shall remain subject to all of the terms and conditions of Section 4 of the Confidentiality Agreement. All information provided to either Party in connection with the negotiations regarding this Agreement shall remain subject to the provisions of such Confidentiality Agreement.

10.14 Communications; Press Releases

The Parties shall reasonably cooperate and coordinate with each other with regard to any communications in respect of the Reliability Support Services or the transactions contemplated by this Agreement with state and local community organizations and groups or the public generally, whether through press releases or otherwise. Each Party agrees to inform the other Party with respect to all such matters and shall promptly provide the other Party with copies of any communications sent, delivered or received; provided that nothing in the foregoing shall operate to prevent a Party from complying with Applicable Law or the requirements of any Governmental Authority or the NYISO concerning such matters.

10.15 Standard of Review

The standard of review for any modifications to this Agreement requested by a Party will be subject to the “public interest” standard of review set forth in United Gas Pipe Line Company v. Mobile Gas Service Corporation, 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Company, 350 U.S. 348 (1956). See also Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish County, 554 U.S. 527 (2008). The standard of review for any modifications to this Agreement requested by a non-party to this Agreement or initiated by FERC will be the most stringent standard permissible under applicable law. See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n, 558 U.S. 165 (2010).

10.16 Counterparts

This Agreement may be executed in several counterparts, each of which is an original and all of which constitute one and the same instrument. Facsimile or PDF signature shall be an acceptable form of execution.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Rochester Gas & Electric Corporation

By: _____

Name:

Title:

By: _____

Name:

Title:

[Developer]

By: _____

Name:

Title:

Exhibit 1
to
Station 43 Substation NWA Agreement
Between RG&E and [Developer]

Billing and Payment

Billing Period. As designated in Section 4.1.

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

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

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

Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions

applicable to this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of products during the monthly billing period under this Agreement, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, that Party shall pay such sum in full when due.

US Federal Tax Forms. Each Party to this Agreement shall upon signing provide the other Party a completed W-9.

Dollars. Unless otherwise stated all dollars in this Agreement refer to U.S. Currency.

Exhibit 2
to
Station 43 Substation NWA Agreement
Between RG&E and [Developer]

Insurance Requirements

[To be determined]