

## FIRST AMENDMENT TO PILOT AGREEMENT

This **First Amendment to PILOT Agreement** ("**First Amendment**") is entered into this 28th day of February, 2017 ("**Effective Date**") by and between the COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York (the "**Agency**") having an address of 201 West Third Street, Jamestown, New York 14701, and DUNKIRK POWER LLC, a limited liability company organized under the laws of the State of Delaware and qualified to do business in New York as a foreign limited liability company, having an address of c/o NRG Energy, Inc., 804 Carnegie Center, Princeton, New Jersey 08540 (the "**Company**", and together with the Agency, the "**Parties**").

### WITNESSETH:

**WHEREAS**, the Company owns and operates the Dunkirk Generating Station ("**Plant**"), an existing, coal-fired generating station located at 106 Point Drive North, Dunkirk, New York 14048, which, for purposes of this First Amendment, consists of Units 1, 2, 3, and 4 and certain other real and personal property on the site (collectively, the "**Plant Improvements**");

**WHEREAS**, under New York Real Property Tax Law Article 4 and General Municipal Law Article 18-A, real property acquired by the Agency or under the jurisdiction, supervision or control of the Agency is exempt from general ad valorem real property taxation;

**WHEREAS**, the Agency and the Company entered into a Company Lease Agreement dated as of April 25, 2008 ("**Company Lease**") pursuant to which the Agency acquired a leasehold interest in a portion of the Plant Improvements, which became exempt from general ad valorem real property taxation;

**WHEREAS**, the Agency and the Company entered into an Agency Lease Agreement dated as of April 25, 2008 (the "**Agency Lease**") pursuant to which the Agency subleased its interest acquired under the Company Lease back to the Company;

**WHEREAS**, pursuant to New York General Municipal Law, the Agency and the Company entered into an agreement for payments in lieu of taxes, dated as of April 25, 2008 (as modified or supplemented heretofore, the "**PILOT Agreement**") which required the Company to make payments in lieu of real estate taxes ("**PILOT Payments**") to the Agency through and including the 2027-2028 tax fiscal year of the Dunkirk City School District ("**School District**") and the 2028 tax fiscal year of the City of Dunkirk ("**City**") and Chautauqua County ("**County**", and together with the City and School District, the "**Taxing Jurisdictions**"), or until termination of the Agency Lease, whichever date occurs first;

**WHEREAS**, on January 30, 2014, the Company notified the Agency that Unit 1 and Units 3 and 4 were taken out of service on June 1, 2013 and September 11, 2012, respectively, which reduced the total generating capacity of the Plant by 85%;

**WHEREAS**, on January 28, 2016, the Company notified the Agency that it had made the election provided for under Section 4(b)(i) of the PILOT Agreement, entitling the Company to make reduced PILOT Payments with respect to Units 1, 3 and 4 that had been out of operation for more than six (6) months, all in accordance with the provisions of said Section 4(b)(i) of the PILOT Agreement;

**WHEREAS**, also on January 28, 2016, the Company notified the Agency that Unit 2 was placed into mothball status effective January 1, 2016;

**WHEREAS**, on January 30, 2017, the Company notified the Agency ("**January 2017 Notice**") that it had made the election provided for under Section 4(b)(i) of the PILOT Agreement, which may entitle the Company to make further reduced PILOT Payments with respect to Unit 2 that had been out of operation for more than six (6) months, all in accordance with and subject to the provisions of the PILOT Agreement and the Agency Lease;

**WHEREAS**, the Company and Niagara Mohawk Power Corporation (d/b/a National Grid ("**National Grid**") entered into a Term Sheet Agreement dated February 13, 2014 ("**Term Sheet**") pursuant to which the Company would complete the addition of natural gas-firing to each of the Plant's Units 2, 3 and 4 (each, a "**Gas Addition**", and collectively, the "**Gas Addition Project**");

**WHEREAS**, the New York Public Service Commission ("**NYPSC**") issued an Order ("**Order**") Addressing Repowering Issues and Cost Allocation and Recovery on June 13, 2014 approving the Term Sheet filed, under Docket 12-E-0577 - Proceeding on Motion of the Commission to Examine Repowering Alternatives to Utility Transmission Reinforcements;

**WHEREAS**, the Company and National Grid on November 21, 2014, entered into an agreement ("**DNG Agreement**") for the Gas Addition Project;

**WHEREAS**, Entergy Corporation instituted a lawsuit in the U.S. District Court, Northern District of New York (Entergy Nuclear Fitzpatrick, LLC et. al. v. Zibelman, et. al., Case Number: 5:15-cv-00230-DNH-TWD) ("**DNG Lawsuit**") on February 27, 2015 against the NYPSC for issuing the Order approving the Term Sheet and challenging its validity, which, among other things, created significant uncertainty for the Company to move forward with the Gas Addition Project, causing the Company to place the project on hold;

**WHEREAS**, as of November 29th, 2016, the DNG Lawsuit was dismissed with prejudice;

**WHEREAS**, as a result of the dismissal of the DNG Lawsuit, the Company has resumed the development of the Gas Addition Project;

**WHEREAS**, upon completion of each Gas Addition (which may or may not be contemporaneous), each respective gas-fired Unit will be returned to service under the terms of the PILOT Agreement and the PILOT Payments will be adjusted accordingly, all in accordance with the PILOT Agreement and the terms hereof; and

**WHEREAS**, notwithstanding the terms of the PILOT Agreement which may entitle the Company to further reduce its PILOT Payments as a result of all of the Plant's Units being in mothball status for more than six months, given the possibility of the return to service of one or more of the Plant's Units as gas-fired Units per the Gas Addition Project, the Company and the Agency have agreed that it is in their respective best interest that the Company make interim payments to the Agency, in the amount and manner and subject to the terms described herein;

**NOW, THEREFORE**, in view of the foregoing premises and in consideration of the mutual covenants and promises contained in this First Amendment, the Company and the Agency agree as follows:

Section 1: **Interim Tax Payments**: Starting with the 2017-2018 tax fiscal year of the School District and the 2018 tax fiscal year of the City and County and until the earlier of (i) the completion of the first Gas Addition or (ii) the 2022-2023 tax fiscal year of the School District (and the 2023 tax fiscal year of the City and the County), the Company shall pay the Agency a fixed payment of \$420,000 annually, due on January 15<sup>th</sup> of each succeeding tax fiscal year after the date hereof. The Agency agrees that the payment of such fixed annual amount shall be deemed to satisfy all of the Company's general ad valorem real property tax obligations to each Taxing Jurisdiction for the respective PILOT year as provided for in the PILOT Agreement and Exhibit D thereto. Pursuant to section 4(e) of the PILOT Agreement said payments shall be split by the Agency among the Tax Jurisdictions in accordance with GML 858(15) or as otherwise agreed to by the Tax Jurisdictions.

Section 2: **Credit to Future Pilot Payments**: For each payment provided for under Section 1 above that is actually made by the Company, the Company shall be entitled to a year-for-year credit to be applied to the Company's PILOT Payment following the completion of at least one Gas Addition. The amount of the credit will be equal to \$370,000 annually for each such \$420,000 payment made, which shall be applied in inverse order (i.e, starting with the last PILOT Year). For the avoidance of doubt and for illustrative purposes, the Parties intend that the annual credit will be computed and applied in the manner shown in the following example:

*Example:*

Assume that the Company pays \$420,000 annually for three (3) years pursuant to Section 1 above.

Once one Gas Addition is completed, the annual PILOT Payment for the each of the last three fiscal years of the PILOT Agreement (ending in the 2027-2028 tax fiscal year of the School District and or the 2028 tax fiscal year of the City and the County) shall be reduced by \$370,000 per annum.

Section 3: **Return of Service of the Units:** The Parties agree and acknowledge that in accordance with Section 4(b)(i) of the PILOT Agreement, as each Gas Addition is completed (and thereby each such gas-fired Unit is returned to service), the PILOT Payments for the applicable PILOT year under the PILOT Agreement (thereafter) will be calculated by multiplying (i) the Total PILOT Payment for such year as set forth in Exhibit "D" (Schedule of PILOT Payments) to the PILOT Agreement, by (y) the ratio established by dividing the total the nameplate rated generating capacity of each such returning Unit (and previously returned Unit(s)) by 450 MW (which for the avoidance of doubt is the original maximum capacity of 530MW, less Unit 1's 80 MW capacity, which Unit will remain mothballed), which shall be due and payable at the same time the next succeeding PILOT Payment is due and payable. For the avoidance of doubt and for illustrative purposes, the Parties agree that it is their intent that the PILOT Payments for a tax year following completion of at least one Gas Addition will be computed and applied in the manner shown in the following example:

*Example:*

Assume that Gas Additions for Units 2, 3 and 4 are completed sequentially and that the respective MW returned to service are as shown below. The following table shows the corresponding MW and PILOT Payment as each Unit is completed (excluding the application of the \$370,000 credit at the end of the PILOT term) for a theoretical staggered return to service over three years:

Gas Addition Completed	Nameplate MW Returned to Service	PILOT Year Returned to Service	Schedule "D" Total PILOT Payment for applicable PILOT Tax Year	Cumulative Ratio of all Completed Gas Addition Units (per Section 3 of the First Amendment)	PILOT Payment
Unit 2	80MW	2019	\$8,857,131	80/450	\$1,574,601
Unit 3	185MW	2020	\$9,034,274	265/450	\$5,320,184

Gas Addition Completed	Nameplate MW Returned to Service	PILOT Year Returned to Service	Schedule "D" Total PILOT Payment for applicable PILOT Tax Year	Cumulative Ratio of all Completed Gas Addition Units (per Section 3 of the First Amendment)	PILOT Payment
Unit 4	185MW	2021	\$9,214,960	1.0	\$9,214,960

In addition, the Parties agree and acknowledge that any adjustment to PILOT Payments for the retirement, damage and/or destruction of a gas-fired Unit shall be in accordance with Section 4(b)(i) of the PILOT Agreement, except that (i) no adjustment shall be made with respect to the retirement, damage or destruction of Unit 1 and (ii) the decreased PILOT Payment for such any retired, damaged or destroyed gas-fired Unit shall be calculated by multiplying (i) the Total PILOT Payment for the then applicable year as set forth in Exhibit "D" (Schedule) to the PILOT Agreement, by (y) the ratio established by dividing total the nameplate rated generating capacity of each such retired, damaged or destroyed gas-fired Unit (and any previously retired or damaged or destroyed gas-fired Unit) by 450 MW.

Section 4: **Effect of Termination of the DNG Agreement**: The Parties agree that if the DNG Agreement is terminated for any reason and same is not replaced with a similar agreement, the Parties will negotiate in good faith for a new or revised PILOT Agreement, which shall take into account such termination, the status of any Gas Additions, if any, any temporary or permanent Unit retirements and/or any other factors or circumstances as the Parties may wish to consider. If the Parties fails to reach such new or revised PILOT Agreement within sixty (60) days of written notice to the Agency by the Company of the termination of the DNG Agreement (which new or revised Agreement may be subject to any required approvals to become effective) or the Agency is unable to obtain any required approvals therefor within an additional sixty (60) days, then, at the Company's option upon ten (10) days written notice to the Agency, the Plant and the Plant Improvements shall be placed back on the tax rolls for all future assessment periods, and the Company shall thereafter be responsible for payment of all future taxes as provided by the then current law and the Company shall have all rights to challenge said assessments.

Section 5: **Mothballing of Unit 2; Reservation of Rights**: The Agency agrees and acknowledges that in order for the Company to preserve its rights under the PILOT Agreement with respect to the mothballing of Unit 2, this First Amendment, together with the January Notice, shall be deemed by all the Parties to constitute formal notice under Section 4(b)(i) of the PILOT Agreement that Unit 2 has been out of operation for more than six (6) months which may entitle the Company to further reduce its PILOT payments for the next succeeding PILOT year



and all PILOT years thereafter until such unit may be returned to service. The Agency and the Company each expressly reserve their rights under the PILOT Agreement and the Agency Lease with respect to the mothballing of Unit 2 (except as set forth herein). The Agency shall notify each Taxing Jurisdiction of this First Amendment and of the deemed notice pursuant to this Section 5.

**Section 6: Forbearance of Termination Rights under Company Lease and Agency Lease**: Notwithstanding the above and or anything contained herein, so long as the Company is timely making the payments described in Section 1 hereof, the Agency shall forbear from exercising any current or future termination rights it may have now or in the future under the Company Lease or the Agency Lease with respect to the mothballing of all of the Units of the Plant, except, in each case, in the event of a uncured breach by the Company of its obligations hereunder or under the PILOT Agreement or the Agency Lease. The Parties agree that the Company Lease and the Agency Lease are each in full force and effect.

**Section 7: PILOT Agreement in Full Force and Effect**: The Parties agree and acknowledge that nothing herein shall affect the validity of the PILOT Agreement and that except as amended herein, the Parties intend and hereby do agree and reconfirm that the PILOT Agreement is in full force and effect according to its original terms and conditions (except as amended herein). Each of the Parties hereby agrees with each other to do all acts, matters and things which may be necessary or reasonably desirable to give effect to this Section 6 and to the other matters contemplated in this Agreement.

**Section 8: Representations and Warranties**: Each of the Parties hereby represent and covenant that, as of the date of this First Amendment, that (i) it is duly organized, validly existing, and in good standing under the laws of the state in which it is organized, and that it has the full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this First Amendment and (ii) all necessary action has been taken to authorize its execution, delivery, and performance of this First Amendment, and this First Amendment constitutes its legal, valid, and binding obligation enforceable against it in accordance with the terms of this First Amendment and applicable law.

**Section 9: Default**: The Parties agree that any monetary or other material default under this First Amendment by a party shall be considered an "Event of Default" under the PILOT Agreement, to the extent applicable, and each non-defaulting Party shall be entitled to exercise its rights and remedies as provided in the PILOT Agreement.

**Section 10: Dispute Resolution**: Any controversy or claim arising out of or relating to this First Amendment, or the breach thereof, shall be settled by arbitration with a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having

jurisdiction thereof. Unless otherwise agreed by the Parties in writing, the arbitration shall be conducted in New York, New York. Damages, compensation, costs and expenses (including reasonable attorneys' fees) shall be allocated as part of the award of the arbitrator. The award of the arbitrator shall not be judicially appealable.

Section 11: **Entire Agreement**: This First Amendment contains the entire agreement between the Parties concerning the subject matter hereof, superseding all other prior or contemporaneous agreements, written or oral. No amendments or modifications to this First Amendment shall be effective unless made in writing and signed by an authorized representative of each Party.



Section 12: **Governing Law**: This First Amendment shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts or laws.

Section 13: **Binding Effect**. This First Amendment shall inure to the benefit of, and shall be binding upon each of the Parties, and, as permitted by this PILOT Agreement, their respective successors and assigns.

Section 14: **Execution in Counterpart**. This First Amendment may be executed by the Parties hereto in several counterparts, and each such counterpart shall be deemed to be an original and all of which constitute together but one and the same agreement. This First Amendment may be executed by a signature delivered electronically by facsimile or by the use of Adobe portable document format, which shall be deemed the same as an original signature.

*[Rest of page intentionally blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment by their duly authorized officers or representatives.

<b>COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY</b>	<b>DUNKIRK POWER LLC</b>
By: 	By: 
Name: Kevin Sanvidge	Name: Judith Lagano
Title: Administrative Director	Title: President
Date: 2/28/17	Date: