

APPENDIX A

Maryland Standard Obligations for Approval of ESCCs

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1. **Definitions**

1. “*Accredited Unforced Capacity*” (“Accredited UCAP”) means the quantity of UCAP that an ELCC Resource is capable of providing in a given Delivery Year.
2. “*Balancing Ratio*” is an hourly measure calculated by PJM that is equivalent to actual generation plus imports and certain demand response assets, divided by All Committed Generation and Storage Capacity.
3. “*Base Residual Auction*” (“BRA”) means the auction conducted three years prior to the start of the PJM Delivery Year to secure commitments from Capacity Resources as necessary to satisfy any portion of the Unforced Capacity Obligation of the PJM Region not satisfied through Self-Supply.
4. “*Bonus Performance Credits*” has the meaning set forth in the PJM Tariff Attachment DD, Section 10A(e).
5. “*Capacity Credits*” means cleared capacity in a PJM auction.
6. “*Commercial Operation Date*” (“COD”) means the date at which the Project first achieves a state of operational readiness under which (a) the Project has been mechanically constructed and interconnected; (b) power capacity is available to physically store and discharge electric energy to the point of interconnection and qualify for the receipt of ESCC Payments; and (c) all rights, abilities, permits and approvals to schedule and deliver energy to the point of interconnection have been obtained.
7. “*Contracted Storage Capacity*” (“CSC”) means the installed capacity of the energy storage project, up to interconnection or operational limits. CSC for hybrid facilities is the installed capacity of the storage component only, up to interconnection or operational limits.
8. “*Duration*” means the number of hours the energy storage device is capable of discharging energy at its nameplate capacity without recharging.
9. “*Effective Load Carrying Capability*” (“ELCC”) means a method to calculate the capacity contribution of all resources, expressed as a percentage. ELCC captures the expected performance of resources during tight PJM-wide system operation hours that can be caused by high loads and/or poor resource performance.
10. “*Electric Company*” has the same meaning as in § 1-101 of the *Annotated Code of Maryland*, Public Utilities Article.
11. “*Electricity Supplier*” has the same meaning as in § 1-101 of the *Annotated Code of Maryland*, Public Utilities Article.

12. “*Energy Storage Capacity Credits*” (“ESCCs”) means a financial compensation mechanism for the CSC provided by an energy storage device.
13. “*ESCC Payment Rate*” means the annual price of capacity credits, in \$/MW-year paid over the ESCC Term.
14. “*Energy Storage Capacity Credits Price Schedule*” means the price schedule of capacity credits over the ESCC Term.
15. “*ESCC Term*” means the number of years over which the ESCC Price Schedule shall apply.
16. “*ESCC Delivery Year*” means a contract year, whether partial or full.
17. “*Escrow Administrator*” means the third-party institution that manages the receipt and distribution of capacity revenues from PJM and payments to and from the energy storage device owners and Maryland Electricity Suppliers through an Escrow Account.
18. “*Force Majeure*” has the meaning set forth in Section 11(N).
19. “*Good Cause Shown*” means events beyond the developer’s reasonable control that materially delay a critical path milestone which may include: (1) PJM’s interconnection queue; (2) the issuance of permits; (3) delivery of critical project components with long lead times; (4) utility construction of interconnection facilities and network upgrades; and (5) demonstrable Force Majeure events, among other reasons as determined by the Commission.
20. “*Incremental Auction*” (“IA”) means an incremental procurement/release of resource commitments to satisfy an increase/decrease in PJM reliability requirements.
21. “*Maintenance*” means routine upkeep of, or repairs to, specific components of the Project. Maintenance may require a scheduled removal from service.
22. “*Market Participant*” means an entity that generates, transmits, distributes, purchases, or sells electricity, ancillary services, or any other product or service provided under the PJM Tariff or Operating Agreement within, into, out of, or through the PJM Region.
23. “*Market Seller Offer Caps*” (“MSOC”) means the cost incurred by the resource if it is not used for the delivery year, minus projected market revenues.
24. “*Maryland Energy Storage Program Manager*” is the Commission’s coordinator for the Maryland Energy Storage Program with duties as set forth in COMAR 20.50.14.

25. “*National Fire Protection Association*” (“NFPA”) means a nonprofit organization responsible for publishing codes and standards.
26. “*Non-Performance Charges*” means the charge applicable to Capacity Performance Resources as defined in the PJM Tariff, Attachment DD, section 10A(e).
27. “*Non-Performance Charge Rate*” has the meaning set forth in the PJM Tariff, Attachment DD, Section 10A(e).
28. “*Performance Assessment Interval*” (“PAI”) means each real-time settlement interval for which an emergency action has been declared by PJM.
29. “*PJM Delivery Year*” means hour ending 0100 through hour ending 2400, June 1-May 31.
30. “*PJM Subaccount*” means an account for individual generation or load for the purpose of individual settlements.
31. “*PJM Tariff*” means the PJM Open Access Transmission Tariff.
32. “*Reliability Pricing Model*” (“RPM”) means the PJM capacity market design and business rules.
33. “*Resource Performance Adjustment*” (“RPA”) means a metric used in PJM's resource adequacy framework to adjust the accredited capacity of certain resources including limited duration resources such as battery storage.
34. “*Unforced Capacity*” (“UCAP”) means the Accredited UCAP of a generating unit, not to exceed its Capacity Interconnection Rights.

2. Acceptance of an ESCC Award

The following establishes the obligations, milestones, and commercial terms for Maryland's Next Generation Energy Act (“NGEA”) transmission-connected energy storage Project _____ (herein referred to as the “Project”) to receive ESCCs.

- A. The Project shall notify the Commission within 30 calendar days whether the project accepts the conditions in this Order for approval of an ESCC award, or if the Project conditionally accepts an ESCC award along with their proposed changes to conditions as permitted in part B of this subsection.
- B. If the Project cannot move forward under conditions in this Order they may

either formally withdraw or propose changes. Before accepting a proposed change, the Commission may, at its sole discretion, provide an opportunity for other Parties¹ to be heard by way of written comments and/or a public proceeding.

- C. The Project agrees to forgo receipt of any other Maryland energy storage capacity incentives from any other state agency upon acceptance of an ESCC award.

3. Community Benefit Agreement

Pursuant to § 7-1202 of the *Annotated Code of Maryland*, Public Utilities Article (“PUA”), acceptance of ESCCs shall include a commitment to a Community Benefit Agreement (“CBA”) with provisions to increase opportunities for local, small, minority², women-owned, and veteran-owned businesses within the clean energy sector and guarantee the project's timely, safe, and efficient completion by ensuring a consistent availability of highly skilled craft workers, who must be compensated at a rate no less than the prevailing wage determined by the Commissioner of Labor and Industry under Title 17, Subtitle 2 of the State Finance and Procurement Article. Construction work performed in connection with the project will be subject to a CBA that:

- (a) establishes the terms and conditions of employment at the construction site of the project or a portion of the project;
- (b) guarantees against strikes, lockouts, and similar disruptions;
- (c) ensures that all work on the project fully conforms to all relevant state and federal laws, rules, and regulations, including all required training for employees;
- (d) creates mutually binding procedures for resolving labor disputes arising during the term of the dispatchable energy generation project;
- (e) sets forth other mechanisms for labor–management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and

¹ The use of the word “Parties” may refer to the Projects, the Commission, or other entities deemed to be a party by the Commission who the Commission deems relevant to the issue at that time.

² For the purposes of the CBAs “minority” means an individual who is a member of any of the groups listed in § 14-301(k)(1)(i) of the *Annotated Code of Maryland*, State Finance Procurement Article.

health;

- (f) binds all contractors and subcontractors to the terms of the agreement through the inclusion of appropriate provisions in all relevant solicitation and contract documents;
- (g) promotes safe completion of the project by ensuring that at least 80% of the craft workers on the project have completed a 10-hour occupational safety and health administration course;
- (h) promotes career training opportunities in the manufacturing, maintenance, and construction industries for local residents, veterans, women, minorities, and formerly incarcerated individuals;
- (i) include provisions for local hiring and the hiring of historically disadvantaged groups;
- (j) uses locally, sustainably, and domestically manufactured construction materials and components to the extent practicable;
- (k) requires the use of skilled local labor, particularly with regard to the construction and manufacturing components of the project, using methods including outreach, hiring, and referral methods that are affiliated with registered apprenticeship program under Title 11, Subtitle 4 of the Labor and Employment Article; and
- (l) authorizes the Maryland Department of Labor and the Commission to consider, review, and enforce compliance with any CBA.
 - A. The Project shall notify and file with the Commission a signed copy of the CBA within 30 calendar days of executing the CBA with the Maryland Department of Labor.
 - B. If the Project elects to provide commitments of benefits to local communities or with skilled labor organizations and/or contractors, the project shall notify and file with the Commission a signed copy of the Memorandum of Understanding or other agreement within 30 calendar days of executing the agreement and these commitments shall be considered a CBA commitment.
 - C. Following the acceptance of this Order, the Project shall submit an annual report within 90 calendar days after each PJM Delivery Year to the Commission on its progress establishing and implementing its CBA commitments. The Project shall, within 90 calendar days of the issuance of this Order, coordinate with the Commission's Maryland Energy Storage Program Manager and Commission Technical Staff to mutually agree on a reporting template.
 - D. The Project shall make good-faith efforts to implement its CBA commitments stipulated. Information regarding the attainment of the CBA commitments, accompanied by an explanation and remediation plan for any shortfalls, shall be included in a semi-annual report on

progress implementing CBA commitments.

- E. The CBA shall comply with the requirements outlined in PUA §7–1202 and the Project shall notify the Commission if the terms of the CBA change.

4. Project Changes to Conditions Used for Project ESCC Evaluation

- A. The Project shall make good-faith efforts to complete its project according to the scope as described in its Application in response to the Commission's Energy Storage Request for Applications Solicitation, as modified by this Order, and as may be amended by mutual agreement of the Project and the Commission.
- B. Subject to 4.A. the Project shall notify the Commission of any material changes in project scope including, but not limited to: battery chemistry, point of interconnection, rated capacity, storage duration at rated capacity, operating plan or any other material technical changes to project scope that were considered in evaluating and awarding ESCCs to the project by the Commission.

5. Surety Bond and Commercial Operation Date

- A. Within 5 business days from Application approval for an ESCC award, the Applicant must provide a surety bond for \$25,000 per MW of nameplate capacity to the Commission. The surety bond will run to the Commission, as obliged, for the benefit of the State of Maryland. The bond must be issued by a surety company that holds a certificate of authority licensed to do business in Maryland. The bond must name the Maryland Public Service Commission as the sole beneficiary. The surety bond provider must have a credit rating of at least A3/A-. The liability of the surety bond shall be as follows:
 - (i) continuous, but it is subject to cancellation with 60 days' notice to the Commission;
 - (ii) may not be aggregated or cumulative, whether or not the bond is renewed continued, replaced or modified; May not be determined by adding together the penal sum of the bond, or any part of the penal sum of the bond, in existence at any two or more points in time;
 - (iii) shall be considered to be one continuous obligation, regardless of increases or decreases in the penal sum of the bond;
 - (iv) may not be affected by:
 - (a) insolvency or bankruptcy of the licensee;
 - (b) any misrepresentation, breach of warranty, failure to pay a premium, or any other act or omission of the Applicant or an agent of the Applicant;

- (v) may not require an administrative enforcement action by the Commission as a prerequisite to liability; and
- (vi) shall continue until the Project reaches commercial operation.

B. The Project shall adhere to a COD of:

- (i) for Jade Meadow III Storage Project, the COD shall be October 1, 2028; and
- (ii) for Chalk Point Reliability Storage Project, the COD shall be October 1, 2028 for 225 MW; December 31, 2028 for 335 MW; and April 30, 2029 for 400 MW.

C. Without limitation to Section 5B., where the Project is able to demonstrate that achieving commercial operation by this date is not possible for Good Cause Shown, the Project may offer a proposed change to COD.

D. All Good Cause Shown petitions for approval of a COD change shall be filed by the Project with the Commission.

E. The Commission may extend the proposed COD up to an additional 24 months for Good Cause Shown when events or circumstances have occurred that are beyond the reasonable control of the Project. All such extensions are capped at 24 months cumulative, except in the case of Force Majeure overlap, with monthly progress reports and third-party verification required for extension claims over 6 months.

F. Upon delays in the Commercial Operation Date that are not excused for Good Cause Shown, the surety bond will be drawn upon for each day from and after such a date in an amount equal to \$200.00 per MW of nameplate capacity. The surety bond will compensate Maryland ratepayers for the delays in Commercial Operation Date, until the Project achieves commercial operation or the bond is fully called upon, whichever comes first. A claim against the bond may be filed with the surety by the Commission if that Applicant fails to achieve commercial operation. Once the bond is paid to the Commission, the Applicant is relieved of liability under the bond. In such a case, it will be at the Commission's discretion whether to terminate the ESCC award. The Applicant may request or recommend, and the Commission at its discretion may accept or require, additional conditions, including additional surety bonds, in lieu of terminating the ESCC award if the bond has been paid in full.

6. Construction Approval

A. The Project shall apply for construction approval using the application on the Commission's website.

B. The Project shall apply for construction approval within 90 calendar days of its

acceptance or conditional acceptance of an ESCC award, unless a consensual extension is determined, or the ESCC award will be forfeited.

- C. The Project shall adhere to COMAR 20.50.14 Energy Storage for stakeholder engagement, safety, siting, and environmental requirements and become registered in the Maryland Energy Storage Program by the Commission's Maryland Energy Storage Program Manager upon the project's COD.
- D. The Commission may require the Project to agree to additional conditions for construction approval. Pursuant to COMAR 20.15.14B(5), an applicant shall have 10 business days to agree or disagree with any state agency recommended conditions in a filing to the Commission before a final determination is made by the Commission.
- E. If the Construction Approval is not successfully obtained from the Commission by the Project, this Order shall automatically become null and void and of no further force or effect. In such an event, neither the Commission or the Project shall have any further obligation or liability to the other under this Order. Furthermore, the termination of this Project shall be free and clear of any and all claims, demands, liens, or encumbrances of any kind upon the Commission, and the Commission shall be fully released from any financial or legal obligations related to this transaction.

7. Decommissioning Plan

- A. The Project agrees to a decommissioning plan that complies with NFPA 855 requirements for creating a plan and for the safe handling and disposal of batteries, including a plan to maximize the recycling or reuse of all qualifying components of each energy storage device.
- B. The Project may submit a revised recycling and reuse plan that incorporates emerging recycling and reuse opportunities up to one (1) year before executing the decommissioning plan.
- C. The Project agrees to obtain a surety bond or irrevocable letter of credit for decommissioning of the Project, valued at the cost of decommissioning net the salvage value, which shall be recalculated every five years for the Project's lifetime.
- D. The Project shall file with the Commission any modifications to its decommissioning plan, including any revisions to its decommissioning cost estimate.

8. ESCC Price Schedule and Contracted Storage Capacity

- A. The Chalk Point Reliability Storage Project and the Jade Meadow III Battery Storage Project shall be paid the ESCC Payment Rate and Annual ESCC

Payment Amount as provided in June 1, 2026 Power Advisory Report.

- B. Monthly payments shall be one-twelfth of the annual ESCC payment amount.
- C. No ESCC payment shall be made unless the Project offers its accredited capacity into the PJM RPM or IA, as applicable for each PJM delivery year for the ESCC Term pursuant to 11.6 of PJM's Operating Agreement ("OA") and Attachment Q of the PJM Tariff. The Project is not required to clear the auction to receive ESCCs. If PJM or its independent market monitor determine that the project violated cost-based PJM rules for MSOCs the project may incur additional penalties from the Commission.³
- D. Ratepayers, purchasers of ESCCs, and the State shall be held harmless for any cost overruns associated with the Project.
- E. The Commission shall not take any action that would materially impair the timely flow of ESCC Payments to the Project during the ESCC Term of the Standard Obligations, except as expressly provided herein.
- F. Any debt instrument issued in connection with the Project must include language specifying that the debt instrument does not establish a debt obligation or liability of the State.
- G. Maintenance of the CSC for each ESCC Delivery Year.
 - (i) The Project shall be responsible for ensuring the Maintenance of the CSC for each ESCC Delivery Year. The CSC for each ESCC Delivery Year will not decline, potentially requiring cell augmentation over time to maintain the CSC offered.
 - (ii) The Project may participate in PJM energy and ancillary services markets to the extent such participation does not affect the CSC for each ESCC Delivery Year.
 - (iii) The Project shall follow all PJM rules for capacity market participation as described in the PJM Tariff, Reliability Assurance Agreement ("RAA"), OA and any applicable PJM Manuals.

9. Capacity Accreditation/ Performance Penalties and Bonuses

- A. If applicable, Accredited UCAP shall be applied to only the storage component of a hybrid solar/storage project.

³ If a project does not clear an auction it must adhere to cost-based PJM rules for MSOCs, which reflect the cost incurred by the resource if it is not used for the delivery year, minus projected market revenues. It is in Maryland ratepayer's interests that the project clear PJM capacity auctions therefore, violations of PJM rules for MSOCs should be subject to Commission penalties.

- B. The Project shall not be responsible for the ESCC revenue risk of future changes in determinations of Accredited UCAP, nor will the project benefit from any upside revenues that may result from future changes in determinations of Accredited UCAP.
- C. The Project will be responsible for any changes to its Accredited UCAP (whether based on the applicable ELCC Class Rating or on a unit-specific ELCC rating) pursuant to PJM's annual ELCC RPA process as described in PJM Manual 21B, Section 4.2. To the extent that the RPA for a prospective Delivery Year results in a reduction to the Project's Accredited UCAP, the CSC for the prospective Delivery Year will be reduced by the ratio of Adjusted Accredited UCAP divided by Previous Delivery Year Accredited UCAP. To the extent that the RPA for a prospective Delivery Year results in an increase to the Project's Accredited UCAP, the CSC for the prospective Delivery Year will be increased by the ratio of Adjusted Accredited UCAP divided by Previous Delivery Year Accredited Administrator and be effective for the applicable PJM Delivery Year within 30 calendar days of notification to both the project and the Commission. RPAs that result in a decrease in Accredited UCAP. This determination shall be made by the Escrow (compared with the previous Delivery Year determination) by more than 5% in two consecutive years will trigger a termination right for the Commission.
- D. The Project assumes responsibility for any financial penalties assessed against the project during PJM PAI events, up to the storage duration of the project. For a project with 4-hour duration, the Project is responsible for any financial penalties assessed during the first 4 hours, cumulatively, of PAIs that occur during each calendar day (i.e., the "Duration Threshold"), with exceptions for PAI events that span multiple calendar days as described below.
- (i) The Project is responsible for PAI non-performance charges up to the PAI stop-loss limit defined as cumulative 5-minute PAIs in a calendar day equaling the project's storage Duration Threshold. Once this threshold is reached, 100% of any penalties for subsequent "Excess PAIs" will be reimbursed by the Escrow Administrator to the Project as follows:
 - (a) applicable Non-Performance Charge Rate x cleared UCAP amount;
 - (b) the product of (a) x applicable Balancing Ratio; and
 - (c) the product of (b) x cumulative deficient MWh for Excess PAIs] 100%.
 - (ii) A special rule is applicable for a "Spanning PAI Event," which crosses midnight and lasts longer than the Duration Threshold; in this case, the threshold does not reset until the event concludes.

- (iii) Projects are accountable for performance up to their stated capability. However, non-performance charges resulting from a project being on forced or unapproved maintenance outage at the start of a PAI are the sole responsibility of the Project and are not eligible for reimbursement.
 - (iv) Projects must submit documentation of penalties assessed by PJM to the Escrow Administrator for compensation of any financial penalties assessed against the project during PJM PAI events, beyond the storage duration of the project. In addition, projects shall allow the Escrow Administrator to have “*Read Only*” access to the projects applicable PJM sub-account. Documentation of penalties must also include PJM invoices and/or notices.
- E. The Project will retain PJM-allocated Bonus Performance Credits during the ESCC Term, if any.
- F. Appeals
 - (i) The Project may appeal penalties levied by the Escrow Administrator for PAI Non-Performance Charges to the Commission.
 - (ii) The Commission may, at its sole discretion, provide an opportunity for the Project and other parties to be heard by way of written comments and/or a public proceeding. If the Commission overrules the Escrow Administrator’s determination, the project will be refunded any disputed payment amounts.

10. **Escrow Administrator**

- A. As required by PUA §7–1226(a)(v) the Commission will ensure there is a process for the Maryland Electric Companies to jointly select an Escrow Administrator in consultation with the Commission.
- B. The Escrow Administrator as the central settlement agent is responsible for all invoicing and payment collection and shall manage the receipt and distribution of capacity revenues from PJM and payments through the Escrow Account and ensure payment to the Project based on the ESCC Price Schedule in Section 7.
- C. The Commission will conduct further proceedings to determine the expected operations, obligations, and funding, of the escrow account and the Escrow Administrator and the obligations and liability of the Project and other entities responsible for funding the escrow account overseen by The Escrow Administrator.

- D. The Escrow Administrator is responsible for verifying the accuracy of invoices for ESCC Payments by comparing them with PJM statements and may request additional information if needed, such as access to the Project's PJM Subaccount used to settle the PJM Capacity Credits billing line item. However, any such access shall be limited to information reasonably necessary for such verification and shall not extend to any other units, plants, projects, or activities not subject to this Order.
- E. The Escrow Administrator shall manage the receipt and distribution of miscellaneous debits and credits through the Escrow Account as determined by the Commission including, but not limited to, recurring Escrow Administrator contract costs, any PJM related credits or charges as described herein or any penalties levied by the Commission in accordance with its Civil Penalty provisions of Title 13, Subtitle 2 of the Public Utilities Article of the Maryland Code.
- F. Energy and ancillary services revenues shall not be transmitted to the Escrow Account by the Project.
- G. The Escrow Administrator shall establish a clear process for dispute resolution governing the commercial relationship between the project, the Escrow Administrator and other relevant entities. All final determinations by the Escrow Administrator may be appealed to the Commission.
- H. Good Faith Negotiation; Governing Law. Before filing any action in court or initiating any Commission proceeding, the Project, Escrow Account Administrator, and any other relevant parties shall make a good faith, non-binding effort to reconcile any dispute arising under the operation of the escrow account. At either Party's request, such effort shall include a meeting between senior executives (Vice President level, or equivalent) within 30 calendar days of written notice of the dispute. These obligations shall be governed by and construed in accordance with the laws of the State of Maryland without regard to conflicts of laws principles. If the Escrow Administrator disputes any portion of an invoice, the Escrow Administrator shall pay the undisputed portion within a defined time frame and manner established by the Commission in a subsequent order establishing the escrow account.
- I. The Project shall update their contact information with the Escrow Administrator promptly for any changes to entity name; entity contact person name, email address and phone number; remittance address and federal taxpayer identification number.

11. Miscellaneous Provisions

A. Annual Reporting Requirements

Upon acceptance of an ESCC award, the Project shall adhere to any reporting requirements or information requests requested by the Commission's Maryland Energy Storage Program Manager for each PJM Delivery Year. The Project shall, at a minimum, within 90 calendar days after each PJM Delivery Year, submit the following information within its annual report to the Commission:

- (i) RPM market revenues by month;
- (ii) actual resource-specific capacity accreditation received for that Delivery Year, if different from class-average accreditation rate (for hybrid projects, this includes combined capacity accreditation received for both the generator and storage components);
- (iii) project availability in terms of PJM outage data (maintenance and unplanned), which PJM uses to calculate the net capacity available;
- (iv) monthly energy charging and discharging volumes;
- (v) PJM Non-Performance Charges and Bonus Performance Credits; and
- (vi) CBA information as required in Section 3.

B. Events of Default and Right to Cure

If the Project fails to comply with any of conditions in this Order required for approval of ESCCs, the following procedure shall apply:

- (i) Events of Default by the Project. Each of the following constitutes an Event of Default by the Project:
 - (a) any representation or warranty made in this Order proves false or misleading in any material respect, not cured within 10 business days of notice (extendable by up to 60 calendar days if a cure is diligently pursued);
 - (b) failure to operate and maintain the Project in accordance with industry-accepted methods, materially and adversely affecting the Project's ability to perform in compliance with this Order, not cured within 30 calendar days of notice (extendable by up to 60 calendar days if cure is diligently pursued as determined by the Commission or the Commission's designee);
 - (c) voluntary or involuntary bankruptcy proceedings;

- (d) failure to provide or maintain any required surety bond, letter of credit, or cash security, not remedied within 10 business days of notice;
 - (e) failure to make, when due, any undisputed payment required hereunder, not remedied within 10 business days after notice;
 - (f) a Change of Control other than as specifically permitted;
 - (g) failure to obtain or maintain required insurance, not remedied within 20 business days after notice subject to the substitute insurance procedure; and
 - (h) material default in the performance of any other obligation, continuing unremedied for 30 calendar days after notice or actual knowledge (extendable by 30 calendar days, or such longer period as the Commission specifies, if cure is diligently pursued).
- (ii) Events of Default by the Escrow Administrator. Each of the following constitutes an Event of Default by the Escrow Administrator, as applicable: To be defined by the Commission in a subsequent order establishing the escrow account; the Commission in the future may define what constitutes default.
 - (iii) Right to Cure Procedure. Before any Event of Default ripens into a termination right, the Commission shall provide written notice of non-compliance identifying the alleged default, and the Project shall have the applicable cure period specified above to cure. The Commission shall provide an opportunity for hearing upon request. No default shall ripen into an Event of Default while the Project is diligently pursuing cure within the applicable cure period. Upon the occurrence and continuance of an uncured Event of Default, the Commission shall be entitled to suspend performance of its obligations hereunder and to exercise any other remedy available under this Order or Applicable Law.
 - (iv) Early Termination Payment. Without limiting the other remedies available to a Party under this Agreement, upon the occurrence and continuance of an uncured Event of Default, the non-defaulting Party shall be entitled to an early termination payment the calculation of which shall be negotiated in good faith by the Project and any other relevant parties as determined by the Commission and the termination payment ultimately reviewed and determined by the Commission.
 - (v) The Commission shall provide notice of non-compliance to the Project describing the non-compliance.

- (vi) The Project shall have 30 calendar days to respond.
- (vii) If the Project responds and has not cured the non-compliance within this initial 30 calendar day period, the Commission shall provide an opportunity for hearing.
- (viii) Either the Commission shall determine the period for the Project to cure the non-compliance, or the Project shall have 90 calendar days to cure the non-compliance after the hearing.
- (ix) In the event specific performance to cure non-compliance is not possible by the Project, the Commission may determine a remedy in accordance with its Civil Penalty provisions of Title 13, Subtitle 2 of the Public Utilities Article of the Maryland Code, including termination of ratepayer payments.

C. Change of Control and Assignability

- (i) General Restrictions. Except as permitted below, (a) any assignment, transfer, conveyance, or other disposal of this Order or any of the Project's rights, obligations, interests, or responsibilities hereunder without the prior written consent of the Commission is prohibited and shall be void and of no effect, and (b) any Change of Control without the prior written consent of the Commission shall constitute an Event of Default. Any such consent shall not be unreasonably withheld, conditioned, or delayed.
- (ii) Change of Control—Definition. "Change of Control" means any transfer, sale, assignment, pledge, or other disposition of shares or equity interests in the Project having the result that any Person or group acquires, directly or indirectly, 50% or more of the voting equity interests or the right to direct the management and policies of the Project; provided that a Change of Control shall not include any such transaction (a) in connection with a financing of the Project, or resulting from the exercise of remedies by financing parties; (b) pursuant to a tax equity financing, or resulting from the exercise of remedies by a tax equity investor; or (c) following which the management and policies of the Project remain substantially unchanged.
- (iii) Permitted Transferee. "Permitted Transferee" means: (a) an Affiliate of the Project under common control; (b) any Person acquiring the Project in connection with the exercise of remedies by a financing party or tax equity investor; or (c) any Person who (i) meets, or whose parent meets, the minimum creditworthiness and demonstrated-experience eligibility criteria applicable to the Project under the solicitation, and (ii) as of the date of the Change of

Control, has not been, and whose Affiliates are not, adverse to the State or the Commission in any litigation, arbitration, or formal dispute resolution proceeding within the preceding five years.

- (iv) Change of Control Procedure. The Commission's consent shall be required for a Change of Control to a Permitted Transferee. If the Project provides the Commission with written notice identifying the transferee as a Permitted Transferee and the Commission does not respond within 60 business days, the Commission shall be deemed to have confirmed. The Project shall deliver (a) advance notice no later than 15 business days prior to effectuation, (b) evidence of the Change of Control within 5 business days after effectuation, and (c) updated notices and certifications within 10 business days after effectuation.
- (v) Estoppel. Upon written request by the Project or any financing party in connection with a financing, refinancing, or tax equity transaction, the Commission shall execute a customary estoppel certificate within 45 calendar days, confirming: (a) this Order is in full force and effect; (b) whether, to the Commission's knowledge, the Project is in default; (c) the amount and status of any outstanding cure or dispute; (d) the Commission's recognition of financing parties' rights under this Section; and (e) such other customary matters as may be reasonably requested. The Commission may provide reasonable qualifiers and knowledge limitations consistent with standard estoppel practice. Any assignment in violation of this Section shall be void *ab initio* with respect to this Order.

D. Condition Closure and Compliance Filings

- (i) At the successful implementation of each condition in this Order, or every six months, the Project shall file with the Commission a notice indicating that it has fulfilled an applicable condition or provide the status of fulfilling applicable conditions.
- (ii) Upon the expiration of 60 calendar days from the filing, any conditions noted by the Project as fulfilled shall be deemed fulfilled unless the Commission notifies the Project of any applicable condition that has not been met or takes another corrective action.

E. Revocation

- (i) Revocation is triggered by either fraud, misrepresentation, breach of conditions, impossibility of performance, duress, or mutual agreement between the Project and the Commission. Before triggering a revocation, the Commission may, at its sole discretion,

provide an opportunity for the Project and other Parties to be heard by way of written comments and/or a public proceeding.

- (ii) Termination due to default may be triggered by the Project upon an uncured default by the Escrow Administrator, where the Project has not waived such Event of Default in writing. Before triggering a termination by default, the Project shall give the Commission a reasonable opportunity to get the Escrow Administrator to facilitate a cure.

F. Severability

If this Order, or any conditions pursuant thereto, shall be held or made invalid by a court decision, statute or rule, or otherwise rendered invalid, the remainder of the Order and conditions shall not be affected thereby.

G. Change in Law

The Project and, if applicable, its successors, represents and warrants that the ESCCs transferred to the Project conform to the definition and attributes required for compliance with the NGEA as codified in PUA §7-1224 through §7-1229. To the extent a change in law occurs after execution of this Agreement that causes the Project to no longer be eligible under the definition of such attributes, it shall not be a violation of the Agreement's conditions if the Project has used commercially reasonable efforts to comply with such change in law.

- (i) If a Change in Law or applicable PJM Capacity market rules occurs that renders the Project's performance of its obligations hereunder impossible or impracticable, the Project shall be excused from such performance to the extent affected by the Change in Law, provided the Project provides written notice to the Commission within 30 calendar days of such occurrence, and the Parties shall negotiate in good faith to amend the Standardized Obligations to maintain the original intent of the Parties as of the effective date. If the Parties are unable to agree on an adjustment within 60 calendar days, the matter shall be submitted to the Commission for a final, binding

determination of a just and reasonable adjustment. The Project may file an appeal of a final determination by the Commission to the court of proper jurisdiction within 30 calendar days.

- (ii) The Project and Commission intend that the Order shall not be terminated for convenience or for no cause. To the extent the relationship is terminated by a future action of the Commission or Maryland Law, the Project may be entitled to an early termination payment, the calculation of which shall be negotiated in good faith by the Project and any other relevant parties as determined by the Commission and the termination payment ultimately reviewed and determined by the Commission.

H. Indemnification

The Project shall protect, defend, indemnify, and hold harmless the Commission, the State of Maryland, the Escrow Administrator, Electricity Suppliers, and the Maryland Electric Companies (collectively, the “Indemnified Parties”) from and against all liabilities, losses, claims, damages, judgments, penalties, causes of action, costs, and expenses (including reasonable attorneys’ and experts’ fees; each a “Loss”) resulting from, arising out of, or relating to the Project’s breach of this Agreement or caused by any alleged negligence, unlawful act or omission, or intentional misconduct of the Project in the development or operation of the Project or the creation of ESCCs. The Project shall have no indemnification obligation with respect to any claim challenging the legal validity of: (i) this Agreement, (ii) the purchase or sale of ESCCs, (iii) the NGEA as codified in PUA § 7-1224 through § 7-1229, or (iv) the competitive solicitation process. The Project shall indemnify the Indemnified Parties for Loss arising out of or relating to failure by the Project or its affiliates, contractors, subcontractors, or agents to pay the correct amount of wages (including prevailing wages) or to comply with the CBA, notwithstanding whether such failure results from any alleged negligence or omission of the Indemnified Parties. Indemnification obligations survive termination of this Agreement and are not limited by

the amount of the Project's insurance coverage.

I. Limitation of Liability

No Party subject to this Order, and no beneficiary or participant in the ESCC framework, shall be liable to any other for consequential, incidental, punitive, exemplary, or indirect damages, lost profits, or other business interruption damages arising from breach of this Agreement; provided that nothing in this Section shall limit (a) the Project's indemnification obligations in respect of claims brought by a Person other than a Party, or (b) either Party's liability for fraud.

J. Insurance

(i) Maintenance. The Project, at no cost to the Commission, Escrow Administrator, utilities, or ratepayers, shall maintain, from the date the Project acquires control of the project site and throughout the ESCC Delivery Term, the insurance coverages specified below, with carriers having an A.M. Best's rating of not less than A-, VII.⁴ Each policy shall name the State of Maryland, the Commission, the Escrow Administrator, and the Maryland Electric Companies and their respective officers, agents, and employees as additional insureds (where permitted by the coverage line), provide that the policy may not be cancelled or modified until at least 30 calendar days after written notice to the Commission (10 business days for non-payment of premiums), and be reasonably satisfactory to the Commission.

(ii) Minimum Limits

- (a) Commercial general liability: not less than the lesser of \$2,000,000 or \$200,000 per MW of CSC, per occurrence and aggregate, including contractual liability coverage;
- (b) Automobile liability: \$1,000,000 per occurrence;
- (c) Pollution liability: \$5,000,000 per occurrence and aggregate, covering on-site and off-site cleanup, third-party claims, transportation, and non-owned disposal;

⁴ An A.M. Best rating of not less than A-,VII means an insurance company must have a Financial Strength Rating (FSR) of at least A- (Excellent) and a Financial Size Category (FSC) of Class VII (\$50 to \$100 million in adjusted policyholders' surplus)

- (d) all-risk property insurance at full replacement cost; and
 - (e) umbrella/excess liability on a follow-form basis of not less than \$5,000,000 per occurrence over the underlying limits. During Construction Activities, the Project shall maintain builder's risk "all-risk" property insurance at total construction cost.
- (iii) Unavailability. If a required policy is not available on commercially reasonable terms, the Project may request Commission approval of a substitute policy providing substantially similar coverage, with evidence of commercially reasonable efforts to obtain the unavailable coverage. The Commission shall approve or deny such request in its reasonable discretion within 15 business days. Pending such determination, failure to obtain the unavailable insurance shall not constitute an Event of Default.

K. Representations and Warranties of the Project

The Project represents, warrants, and guarantees, as of the Effective Date (all of which survives the project's acceptance of this order as described in section 2):

- (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation; has all requisite power and material governmental permits; and is qualified to do business and in good standing in Maryland;
- (ii) it has all necessary power and authority to accept this Order and consummate the transactions contemplated hereby;
- (iii) the acceptance and performance of this Order by the Project will not violate Applicable Law, its organizational documents, or any material instrument to which it is a party, or result in the creation of any lien upon its property or assets;
- (iv) this Order constitutes the legal, valid, and binding obligation of the Project enforceable in accordance with the terms herein; and
- (v) no action, suit, or claim is pending or, to the Project's knowledge, threatened that could reasonably be expected to result in a material adverse effect on its ability to perform its obligations hereunder.

L. Surety Bond Release and Retention

The \$25,000/MW Commercial Operation surety bond (or equivalent letter of credit or cash security) required under this agreement shall be administered as follows:

- (i) the surety bond shall be refunded in its entirety upon the Project's achievement of Commercial Operation at the CSC;
- (ii) the surety bond shall be retained in its entirety upon an uncured Event of Default by the Project; and
- (iii) once drawn in connection with a pre-COD delay, the Project's subsequent achievement of Commercial Operation shall preserve its entitlement to receive ESCC Payments in accordance with the ESCC Price Schedule, and such draw may within the discretion of the Commission constitute a basis for termination.

M. Force Majeure Event

Neither Project shall be liable for any failure or delay in performance to the extent such delay or failure is due to a cause or circumstance beyond the reasonable control of such Party that could not have been prevented through the exercise of reasonable diligence, including (i) acts of God or the public enemy; (ii) expropriation or confiscation of land or facilities; (iii) compliance with any law, order, regulation or request of any governmental authority, including the Commission (but only with respect to a Force Majeure Event claimed by the Project); (iv) acts of war, rebellion, sabotage, or damage resulting therefrom; (v) major equipment failure not caused by the Project's negligence; (vi) fires, floods, storms, explosions, accidents, riots, or strikes; and (vii) pandemic or epidemic (each a "Force Majeure Event"). A Force Majeure Event shall not excuse payment obligations for ESCCs previously delivered. Failure to obtain any permit or approval shall not constitute a Force Majeure Event unless caused by a Force Majeure Event.

- (i) Notice. Performance affected by a Force Majeure Event shall be excused and suspended, including a day-for-day extension on any

deadline under this Agreement affected by such event, for so long as the circumstances giving rise to such inability exist. The affected Party shall give prompt notice describing the nature, extent, and expected duration, and shall update the other Party on remedial measures. Following a Force Majeure Event, the Parties shall negotiate in good faith to amend this Agreement to give effect to the original intent of the Parties.

- (ii) Termination. Either Party may terminate this Agreement if a Force Majeure Event has occurred and is continuing for 270 consecutive days, exercisable by written notice within 90 calendar days after such period. Upon such termination, neither Party shall have further financial liability, other than those which arose prior to the occurrence of the Force Majeure Event.
- (iii) Declaration. The Project may petition the Commission for declaration of a Force Majeure event when an extraordinary, unforeseen event beyond the control of the Project, such as a natural disaster, war, or pandemic makes it impossible, illegal, or impracticable to comply with this list of conditions in this Agreement required for Approval of ESCCs including achieving commercial operation and delivering capacity services.
- (iv) Approval. Only the Commission can approve the declaration of a Force Majeure Event.
- (v) Changes. If the Project cannot move forward under the awarded conditions due to a Force Majeure event they may either formally terminate or propose changes. Before accepting a proposed change, the Commission may, at its sole discretion, provide an opportunity for the Project and other Parties to be heard by way of written comments and/or a public proceeding.

N. Incorporation of Prior Agreement Conditions

This Order is intended for the Project concerning its authority to receive Maryland ESCCs as described herein, unless superseded by subsequent modifications to conditions in the Standardized Obligations.