

AGENDA
BOARD OF TRUSTEES
PORTLAND WATER DISTRICT
225 Douglass Street, Portland, Maine
Jeff P. Nixon Training Center
6:00 p.m., Monday, January 27, 2020

- | | | |
|-----|--|--------------------------------------|
| 1. | <u>Convene Meeting</u> with Pledge of Allegiance and moment of silence. | President Cote |
| 2. | <u>Roll Call</u> | Clerk |
| 3. | <u>Acceptance of Minutes</u> of the Regular Meeting of December 16, 2019, the Special Workshop Meeting of December 16, 2019 and the Workshop Meeting of January 13, 2020. | President Cote |
| 4. | <u>Invitation for Public Comment</u> | President Cote |
| 5. | <u>Reports:</u> | |
| | ▪ Operations Committee Reports | Trustee Siviski |
| | ▪ Planning Committee Reports | Trustee Lunt |
| | ▪ Administration & Finance Committee Reports | Trustee Garrison |
| | ▪ General Manager's Report | General Manager |
| 6. | <u>New Business</u> | |
| | A. <u>Resolution 20-001</u> approving the revised criteria for the Joseph A. DiPietro Memorial Scholarship. | President Cote |
| | B. <u>Order 20-001</u> authorizing the General Manager to execute Bill Credit Agreement contracts with renewable energy providers. | Administration and Finance Committee |
| | C. <u>Order 20-002</u> authorizing allocation of the 2019 Water Fund Surplus Balance. | Administration and Finance Committee |
| | D. <u>Order 20-003</u> authorizing the Treasurer to begin the process of increasing water rates an average of 2.9% effective May 1, 2020. | Administration and Finance Committee |
| | E. <u>Resolution 20-002</u> appointing a representative to the Southern Maine Regional Water Council Board of Directors. | President Cote |
| 7. | <u>Other Business</u> . An item may be added to this agenda provided seven trustees vote to waive the rule regarding agendas. | President Cote |
| 8. | <u>Second Invitation for Public Comment</u> . | President Cote |
| 9. | <u>Trustee Comments</u> . | President Cote |
| 10. | <u>Executive Session</u> . A motion may be made to go into Executive Session at any time during the meeting to discuss, pursuant to 1 M.R.S. §405(6)(A) personnel, 1 M.R.S. §405(6)(C) real estate, 1 M.R.S. §405 (6)(D) labor negotiations, or 1 M.R.S. §405(6)(E) legal matters. | President Cote |

11. Adjournment.

President Cote

Donna M. Katsiaficas
Clerk

Portland Water District
Board of Trustees Regular Meeting

January 27, 2020

New Business

Agenda Items 6A-6E



Portland Water District
From Sebago Lake To Casco Bay

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6A Resolution 20-001
Date of Meeting: January 27, 2020
Subject: Joseph DiPietro Memorial Scholarship
Presented By: President Cote

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

WHEREAS, the Joseph DiPietro Memorial Scholarship was established in 2003 to provide scholarship assistance to students pursuing higher education in careers related to the water and wastewater industry; and

WHEREAS, the scholarship has been awarded on a yearly basis to deserving students who met the criteria established by the Board of Trustees; and

WHEREAS, the criteria for the Scholarship and associated materials have been updated to better attract students at community colleges and trade schools who are pursuing careers in the water and wastewater industries; and

WHEREAS, proposed changes include expansion of eligibility to students that live in a community that is served by PWD (Portland, South Portland, Westbrook, Windham, Gorham, Raymond, Cumberland, Falmouth, Scarborough, Cape Elizabeth, or Standish);

RESOLVED, that the Board of Trustees supports the criteria for award of the Joseph DiPietro Memorial Scholarship attached hereto as Exhibit A.

BACKGROUND

The DiPietro Scholarship was created in 2003. Some years after its creation, with transitions at SMCC and the trustees' interest in taking more of an active role in recipient selection, a scholarship committee was formed, criteria was developed and broadened, and the scholarship was administered internally. Over the years, applicant's career paths have broadened to include the medical and dental fields. The scholarship committee felt a review and revision of the DiPietro Scholarship criteria was needed to align the focus more closely to the original intent of the scholarship, which was to award a scholarship to a local student enrolled in a vocational trades program at Southern Maine Community College (SMCC). Changes in the criteria and outreach aim to increase the awareness of the scholarship among and applications from trade students.

LEGAL REVIEW

Corporate Counsel has reviewed and approved the proposed motion as to form.

CONCLUSION(S)

The Scholarship Committee endorses the proposed motion for the full Board's consideration.

ATTACHMENT(S)

Proposed Revised Criteria

Revised Criteria Finalized

Joseph A. DiPietro Memorial Scholarship Criteria

The Joseph A. DiPietro Memorial Scholarship was established in 2003 in memory of respected businessman and longtime Portland Water District Trustee, Joe DiPietro. Joe served on the Portland Water District Board from 1988 to 2003 and owned DiPietro's Sandwich Shop on Cumberland Avenue in Portland. He was very active in the community and committed to youth, family, and education. When he wasn't working at his store or representing local residents on the Portland Water District Board of Trustees, he could be found volunteering through the Boys and Girls Club, St. Peter's Roman Catholic Church, or the Lions Club.

The scholarship will be awarded to an individual in the Portland Water District service area **who is pursuing a career that is applicable to the water/wastewater industry**, demonstrates financial need, a commitment to the community, and a desire to improve public health and the environment.

Criteria

- Students must live in a community **served by** PWD (Portland, South Portland, Westbrook, Windham, Gorham, Raymond, Cumberland, Falmouth, Scarborough, Cape Elizabeth, or **Standish**).
- **Students must be pursuing a career that is applicable to the water/wastewater industry (e.g., water/wastewater treatment technology, HVAC, electrical, automation technology, instrumentation, plumbing, pipefitting, fire science, environmental studies, applied sciences, engineering, ~~medical, dental,~~ public administration) and must demonstrate a commitment to PWD's mission to protect public health, public safety, and the environment.**
- Preference will be given to student(s) that:
 - attend or plan to attend **a community college, trade school or** an accredited college or university in PWD's member communities (University of Southern Maine, University of New England, Southern Maine Community College),
 - are the first in their family to attend college,
 - demonstrate a commitment to the community through volunteer efforts, and
 - show high academic performance.
- Students must demonstrate financial need.
- Funds must be used towards tuition. The scholarship will be given on a one-time basis; it is not renewable.

Deadlines

- The \$1,500 scholarship will be awarded annually to a deserving student. The Scholarship Committee, a sub-committee of the Board of Trustees, will review applications in the spring. To apply, students must complete the application by **March 15.**

Joseph A. DiPietro Memorial Scholarship Criteria

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Portland Water District
From Sebago Lake To Casco Bay

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6B Order 20-001
Date of Meeting: January 27, 2020
Subject: Renewable Energy Program Contract
Presented By: David M. Kane

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, Bill Credit Agreement contracts with renewable energy providers are hereby authorized for a capacity not to exceed 11,000,000 kilowatt hours (kwhs) with an average price not to exceed 9 cents per kilowatt hour; and that the General Manager and the Treasurer, each acting singly, are authorized to take such steps as may be necessary to accomplish the intent of the vote.

BACKGROUND

A new state law approved in 2019 provides incentives to promote the construction of renewable energy production. The incentives consist of receiving billing credits on the electricity bill generated by the electricity utility – Central Maine Power in the District’s case. The District has contracted with Competitive Energy Services (CES) to assist the District in reviewing the District’s options in participating in the program.

CES recommends the District enter into a 20-year contract with up to 20 renewable energy projects for approximately 10,000,000 kwhs but not to exceed 11,000,000 kwhs. The District’s purchase would be 5% of the total estimated amount (200,000,000 kwhs) of electricity generated by the renewable energy providers. The contract would pay the renewable energy providers no more than 9 cents per kwh on average and is expected to generate in excess of \$200,000 of retained savings each year on the District’s electricity bills. Additionally, the contract stipulates the Renewable Energy Certificate (REC) would be granted to the District. The market value of the REC is estimated to generate an additional \$250,000 a year for the District. A separate contract with CES (for ongoing program review including auditing and management of the financial and contractual aspects of each agreement entered into by PWD and advice on Renewable Energy Certificates) provides CES with 5% of the net amount the District receives (approximately \$22,500 a year).

The Board reviewed the proposal at its December 9 and 16, 2019 and January 13, 2020 meetings. Copies of the presentations presented and discussed at the 12/16 and 1/13 meeting are attached.

FISCAL REVIEW / FUNDING

The CES consultant's fee paid by PWD to explore the option was \$10,000. If the District participates in the program, the fee will be refunded to the District.

The estimated annual savings to the District of \$450,000 assumes a \$200,000 bill credit, which assumes a 2 cent per kwh margin between the bill credit and amount paid the solar renewable energy providers, and \$250,000 from the REC, which assumes RECs priced of 2.5 cents per kwh of renewable energy produced. Based on the current incentive structure and historical electricity prices and current market REC prices, the \$450,000 annual saving estimate may be a conservative estimate.

LEGAL REVIEW

Corporate Counsel reviewed the proposed motion and approved it as to form.

CONCLUSION(S)

Staff recommends approval of the Agreement.

ATTACHMENT(S)

- A. Renewable Energy Program Summary
- B. December 16, 2019 Staff Presentation
- C. January 13, 2020 CES Presentation
- D. DRAFT Net Energy Billing Credits Agreement

What?

The District is participating in a consortium of public/private companies purchasing the bill credits and renewable energy certificates (REC) generated by privately owned renewable energy producers (RE).

Who?

The consortium consists of 24 organizations and includes LL Bean, Pratt Whitney, State University System and the City of Portland. The consortium is tentatively committed to purchasing credits/REC's generated from RE energy production of 200,000 megawatts. An independent consultant, Competitive Energy Services (CES) issued a Request for Proposals from potential renewable energy developers and is arranging for the consortium members to sign individual 20-year contracts with RE for a proportional share of power generated.

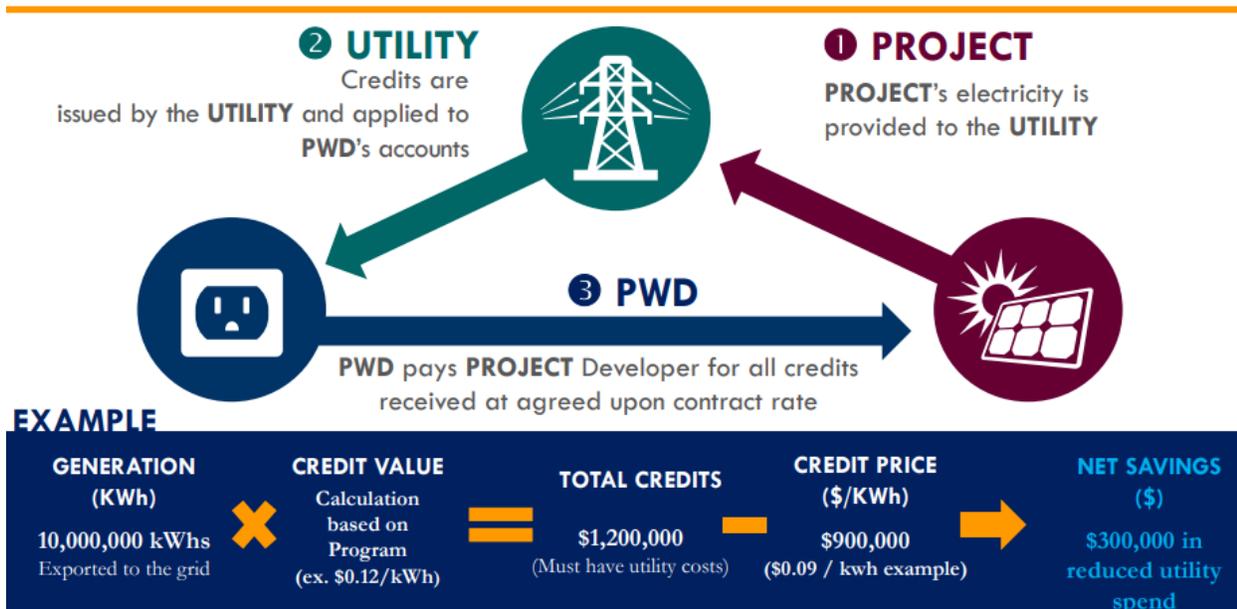
When?

Contracts between the Consortium members and RE are scheduled to be ready in February 2020. RE should have their facilities running by the end of 2022 with Consortium members receiving full program benefits by 2023.

How?

The Net Energy Billing Process

(from CES presentation)



What are the Benefits to the District?

The financial benefit is estimated to be at least \$450,000 per year; \$300,000 on net billing credits and \$150,000 from the REC sale.

What are the risks?

The billing credit value is established by state law and actual electricity rates. Electricity rates would need to decrease approximately 40% to be below the agreed upon fixed rate to be paid by PWD to the RE. A drop in electricity rates benefits PWD by reducing electricity charges to PWD from its supplier. State law could be changed reducing or eliminating the billing credit. It is thought it would be politically difficult to reduce the bill credit value below the breakeven point given the impact that would have on a variety of companies.

If an individual RE is not able to generate at least 50% of the expected renewable energy, the contract can be voided and no financial payment is made to the RE.

To avoid the risk of not having enough CMP-billed electricity costs to be offset by the billing credit, the District is only purchasing credits generated from 62% of its load.



CES Solar Project

Board of Trustee

December 16, 2019

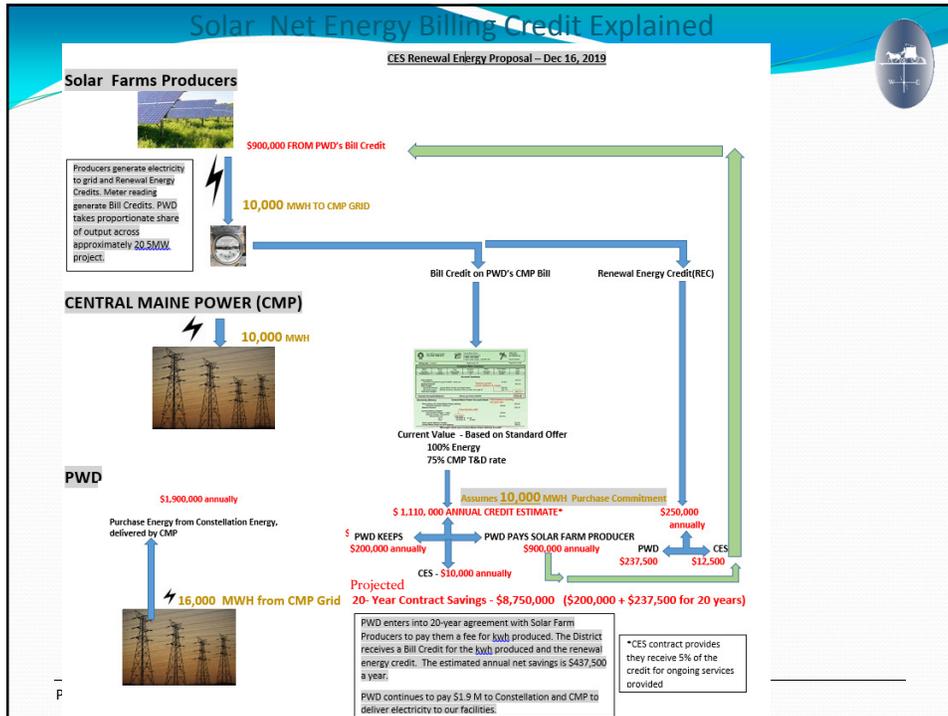
Portland Water District



Agenda

- Net Energy Billing Credit Explained w/Pictures
- Financial Benefits Range
- Responses to Trustees Questions
- Discussion

Portland Water District



PWD's Electricity Accounts

Account Size per CMP	NO of CMP Accts	KWH (million)	Dollar (million)s
Large	3	10.8	\$1.2 *
Medium	21	5.3	\$0.7
Small	86	.8	\$0.1
Total	110	16.9 mwh	\$2.0
Proposal		10.0 mwh	\$1.1

* so.6 million currently billed on Constellation electricity bill. Amounts will be transferred to CMP bill

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Financial Benefit



Billing Credit

	Current
Small	\$0.13
Medium	\$0.1276
Large	\$0.1409
Assumed	\$0.111
Break Even	\$0.09

Rates for the Past 10 years:

100% of Energy Price: Last 10 Years Range

Small \$0.0643 to \$0.090029

Medium \$0.061 to \$0.089

Large* \$0.0408 to \$0.0856

75% of CMP T&D SGS Price:

\$0.0483 to \$0.0675

Range: \$0.089 to \$0.158

Annual Billing Credit \$890,000 to \$1,580,000

* Not including capacity charge – approximately \$100,000 or about a \$.01 per kwh

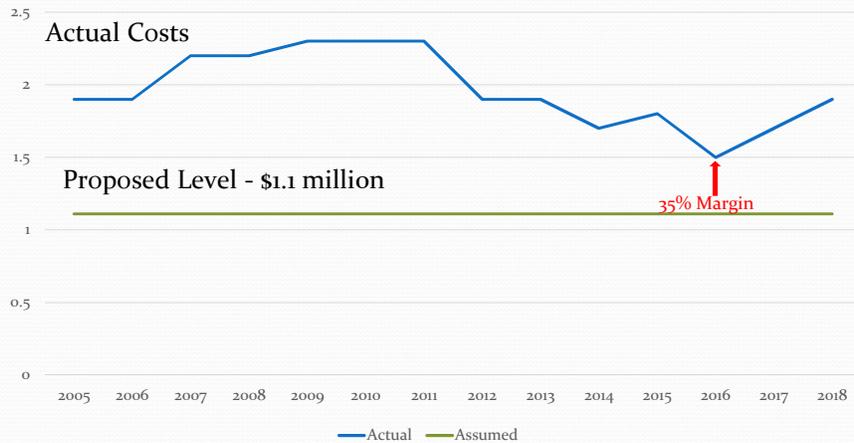
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Financial Benefit



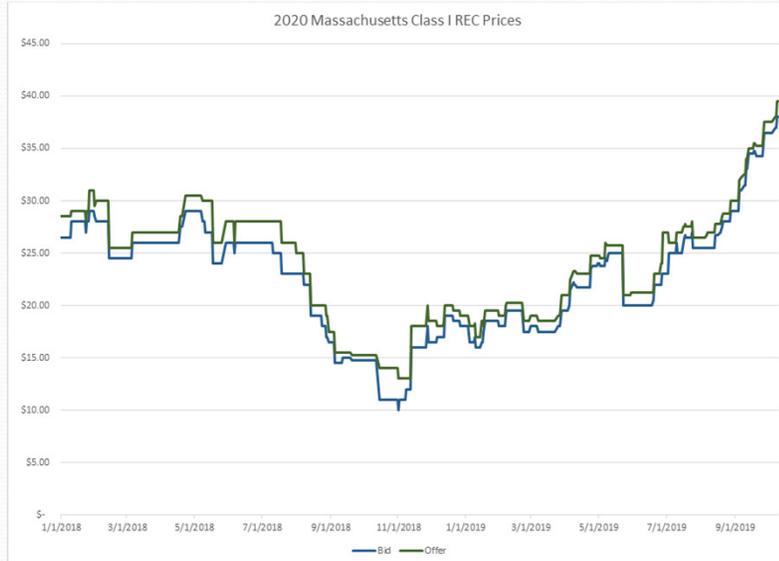
Billing Credit

Actual PWD Electricity Costs vs Proposed CES Project Level



Portland Water District

Renewable Energy Credit (REC)



Portland Water District

Renewable Energy Credit (REC)

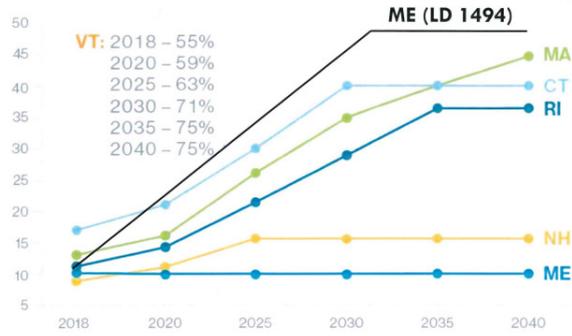


RPS | New England State Comparison



State Renewable Portfolio Standards Are Rising

Class I or new renewable energy resources (%)



ISO New England State Profiles, 2019

RPS costs are paid by all ratepayers based on a function of the **required %** for compliance and the **cost of RECs**

Current Maine Policy:

- 10% New (Class I)
- 30% Existing (Class II)

LD 1494 increases Class I requirement to **50% by 2030**, changes resource eligibility to allow more hydro to qualify as Class I, and adds thermal carve out.

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Financial Benefit



Bill Credit Range **\$890,000 to \$1,580,000 per year**

REC **\$100,000 to \$400,000 per year**

Total Range **\$990,000 to \$1,980,000 per year**

Assumed \$1,110,000 Bill Credit and \$250,000 REC for Total of \$1,360,000.

Financial Benefit to cover \$900,000 of payments to Solar Farms

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Trustees Questions



- Who is Competitive Energy Services?

CES DID YOU KNOW?



IN MAINE:

- CES represents more than 360 businesses with 3,500 utility accounts. **About 10% of all electricity consumed in ME.**

RENEWABLES CONSULTING:

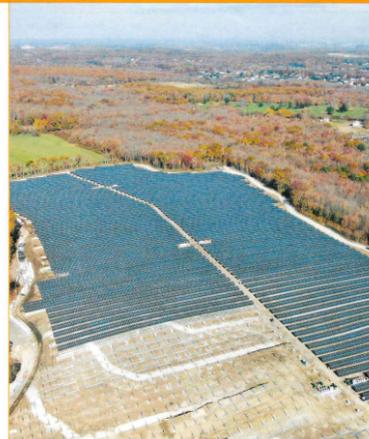
- **PROJECTS IN:** ME, NH, VT, MA, CT, RI, NY, PA, UT, OR, CA

DATA SERVICES:

- Department At CES
- Tracking, auditing, reporting

ENERGY MASTER PLANNING:

- Planning for the next 20 years
- Resiliency, Reliability, Decarbonization



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Trustee's Questions



- Regarding major power usage, roughly what MWH is PWD using for power and at which facilities?
 - ***A detailed schedule has been distributed***
- Can we select a different commitment than 10,000 MWH?
 - ***Yes***
- Can we change the 10,000 MWH amount of the commitment at this point in the process?
 - ***Yes***
- Who is subsidizing the credits that PWD would receive?
 - ***All CMP ratepayers***

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Trustee's Questions



- How do the credits impact PWD ratepayers?
 - ***~ \$1.83 per water customer (water – 22% of credit)***
 - ***~ \$6.40 to \$71.50 per wastewater customer (ww-78% of credit)***
- Why do you get a better deal if you get in on the first round of these projects?
 - ***Per CES: lowest cost development happens first, federal tax credit declines in future years***
- Can we get out of the contract during the 20 year period?
 - ***There is no termination “for convenience”.***

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Trustee's Questions



- If we proceed, how will we message this? Are we “buying solar power”? Are we financing infrastructure for solar generation? Are we promoting green energy?
 - ***For discussion; we are buying billing credit and recs and promoting green energy***
- What is the consultant's cut?
 - ***5% of the billing credit***
- What happens if electric rates go down?
 - ***The billing credit is reduced and the entire cmp bill goes down***

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Trustee's Questions



- What happens if the credit percents go down?
 - ***The billing credit is reduced***
- What are RECs and how do they work?
 - ***1 REC represents the generation of 1 megawatt-hour of electricity from a renewable energy source.***
- How has the value of the RECS changed in recent times?
 - ***Refer to prior slide***
- Can PWD do this ourselves?
 - ***Yes***

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Discussion

Portland Water District

COMPETITIVE ENERGY SERVICES, LLC



RENEWABLE ENERGY CONSORTIUM UPDATE

Portland Water District

Andrew Price

January 13, 2020



COMPETITIVE-ENERGY.COM

866.408.4591



AGENDA

1. CES Overview
2. Consortium RFP Overview
3. Net Energy Billing Mechanics
4. Estimated Economics
5. Next Steps & Key Timelines

CES SUITE OF SERVICES



WHO WE ARE

- Offices In Portland, ME & Topsfield, MA and staff in ME, NH, VT, MA & CT
- Clients across the US & Canada
- 100% supplier neutral/product neutral
- Transparent fees
- Customized energy solutions

PROCUREMENT

- Market Monitoring
- RFP Management
- Bid & Financial Analysis
- Product Choice Analysis
- Contract Negotiation

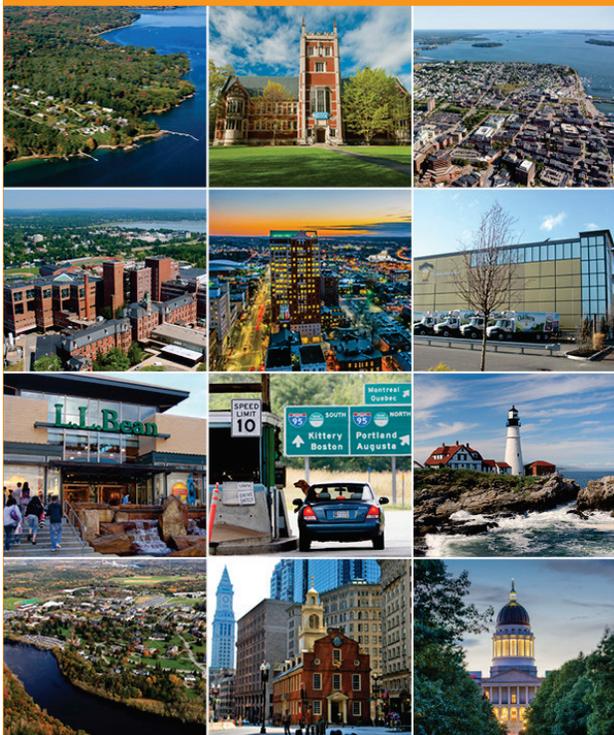
FULL SERVICE

- Budget Management
- Alternative Fuel Analysis
- Tariff Evaluation
- Tariff Negotiation
- Utility Bill Auditing
- Utility Data Management
- Demand Response
- Grant Assistance

CONSULTING

- GHG Tracking
- Climate Action Planning
- Energy Master Planning
- Renewable Energy
- Fuel Cell
- Cogeneration
- Battery Storage
- Fuel Conversion
- LNG/CNG systems

ABOUT CES | Selected Clients



Maine

- Bowdoin College
- LL Bean
- The Jackson Laboratory
- Brunswick Sewer Department
- Freeport Sewer Department
- City of Portland, ME
- City of Augusta, ME
- Husson University
- Maine Community College System
- Maine Maritime Academy
- MaineHealth
- New Balance
- Pratt & Whitney
- Scarborough Sanitary District
- Town of Cape Elizabeth, ME
- Town of Falmouth, ME
- University of Maine System

Other

- Adobe
- Acushnet
- Amherst College
- City of Manchester, NH
- City of Providence RI
- City of Leominster MA
- City of Stamford CT
- Crane Paper
- Dartmouth College
- Temple University
- MIT
- Potsdam Specialty Paper
- University of Massachusetts
- University of Rhode Island
- University of Massachusetts
- Woods Hole Oceanographic
- Williams College

- **CES IS LOCAL** CES is a Maine based company with headquarters in Portland. CES has more than 300 Maine clients and we have a deep knowledge of the Maine energy landscape that comes from our 20 years working closely with Maine consumers.
- **CES KNOWS SOLAR NET ENERGY BILLING** CES has a long and successful track record working on behalf of clients in states that passed legislation very similar to LD 1711. Clients with Net Energy Bill Credits in Massachusetts and Rhode Island include: **City of Providence RI, University of Rhode Island, Narragansett RI, South Kingstown RI, Bristol RI, Barrington RI, City of Leominster MA, University of Massachusetts, Raytheon, Memorial Hospital, Crane Paper, Woods Hole Oceanographic Institute** and many others.
- **CES IS INDEPENDENT** CES is always 100% commodity, supplier, and technology neutral, and puts the interest of our clients first and foremost in the process.



CONSORTIUM OVERVIEW

Participants, Objectives & RFP Process

CONSORTIUM | Members & Objectives



By pooling individual utility credit demand into a broad consortium, CES hopes to achieve:

1. Maximize economic benefits
2. Elicit a large array of project proposals, providing optionality and flexibility for participants
3. Diversify each individual member's project portfolio

Consortium Member	Expected Committed Load (MWh)	
	CMP	Emera
Auburn Public Schools	2,000	
AVX Tantalum	4,700	
Bowdoin College	2,500	
City of Portland	23,637	
City of South Portland	2,000	
Colby College	7,900	
Falmouth School Department	1,500	
Husson University		3,000
L. L. Bean	16,500	
Maine Community College System	5,900	2,700
Maine General Hospital	19,300	
Maine Maritime Academy	3,700	
Nestle Waters North America	30,000	
New Balance	2,000	
Northern Light Health	13,500	15,400
Pleasant River Lumber	12,800	2,600
Portland Water District	10,000	
Pratt & Whitney	25,000	
Pride Sports	3,100	
RSU #14 Windham Raymond	2,100	
Scarborough School Department	3,000	
The Jackson Laboratory		15,000
University of Maine System	15,400	30,700
York County	1,900	
TOTAL	208,437	69,400

Installed Capacity - MW(ac)(*)		
	CMP	Emera
Onshore Wind	69	23
Solar PV	161	53

CONSORTIUM | Process & Results



CES issued the RFP to **100+ industry contacts** and encouraged broad participation from around Maine.

TIMELINE:

Event	Date and time
RFP Release Date	September 19, 2019
Deadline for Bidder Questions	October 10, 2019 at 5 PM EDT
Consortium Response to Bidder Questions	October 18, 2019
Proposal Due Date via email	October 31, 2019 at 2 PM EDT
Expected Contract Execution Date	First quarter 2020

PRICING REQUESTED:

- Full REC ownership
- Offsite projects ONLY
- Fixed price per kWh w/o an escalator
- Imposed "CES" Buyer Friendly Net Bill Credit Contract

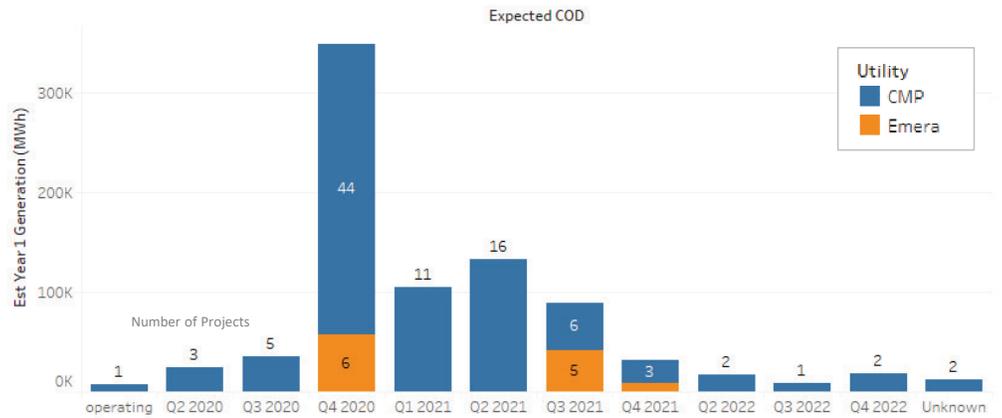
RESPONSES | Participation Summary

Participating Developers

- Borrego
- Cenergy
- Con Edison
- Dimension
- Dirigo & BNRG
- Eagle Creek
- ECA Solar
- Empower
- Encore
- HEP Energy
- Kruger
- Longroad Development
- New England Solar Garden
- Nexamp
- ReVision
- Revity
- SunRaise
- SWEB Development
- Walden Renewables

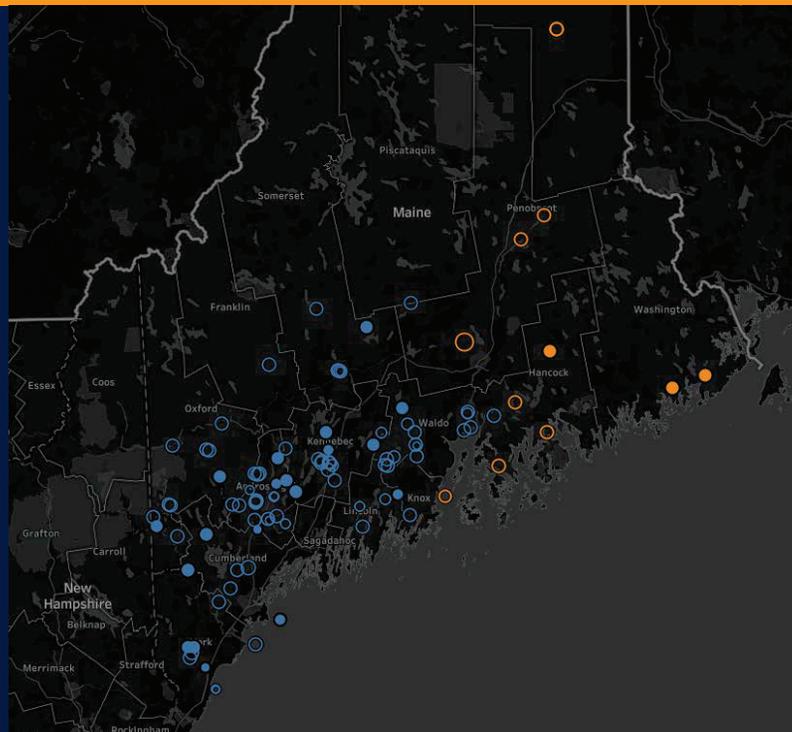
PROJECT STATISTICS

- CMP total est generation is over 3x consortium demand
- Emera total est generation is over 1.5x consortium demand
- Varying stages of development



RESPONSES | Participation Summary

Received responses from **19 companies**, representing over **110 different projects**.



RESPONSES | Pricing & Evaluation Criteria



- Pricing in line with expectations, sufficient projects to fulfill 300% of consortium load
- Other key factors: development status, interconnection position, permitting – CES performing this due diligence
- Final weighted average credit price and resulting savings will depend on project due diligence, tariff rates and final consortium commitments
- Detailed price information is sensitive



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UPDATE | Current Status and Negotiations



- Week of 12/2 CES held interviews with top developers and contacted all developers with follow-up questions and clarifications
- Distributed generation tariff for 2020 published on 12/2
- CMP and Emera in the process of finalizing application process and standard forms
- Balancing development stage and price proposals to bring in best mix of projects
- CES has incorporated legal comments on net bill credit agreement from both developers and consortium members



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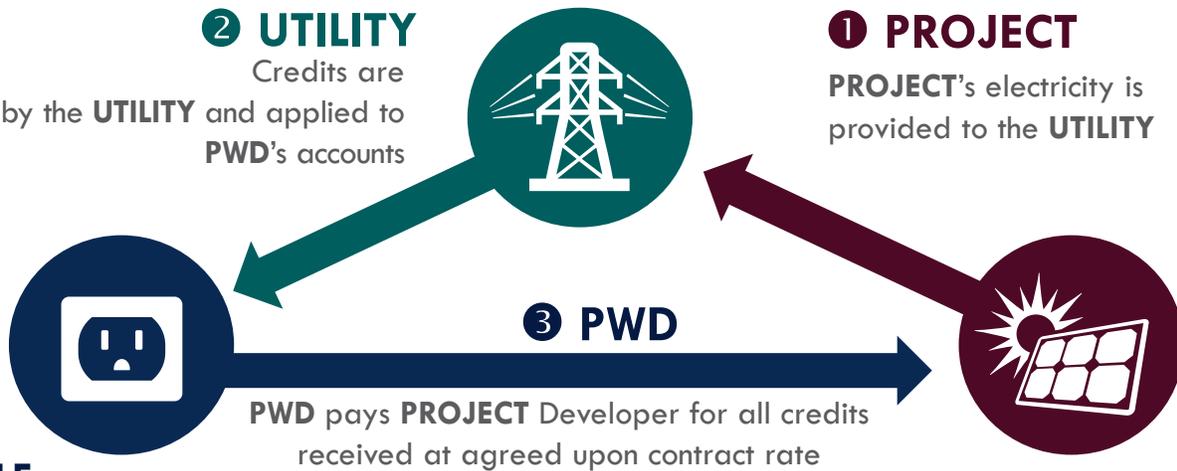


NET ENERGY BILLING MECHANICS

LD 1711 – How it works



MECHANICS | The Net Energy Billing Process



EXAMPLE

GENERATION (KWh)	CREDIT VALUE	TOTAL CREDITS	CREDIT PRICE (\$/KWh)	NET SAVINGS (\$)
10,000,000 kWh Exported to the grid	Calculation based on Program (ex. \$0.12/kWh)	\$1,200,000 (Must have utility costs)	\$900,000 (\$0.09 / kwh example)	\$300,000 in reduced utility spend

MECHANICS | Net Energy Billing Credit Rate

- Credits do not impact procurement / delivery of physical electricity
- Credits can be applied to any CMP account
- Credit Rate = default (standard offer) rate for the applicable rate class plus 75% of the small general service T&D charges
- Credit rate will be reset each calendar year
- Order establishing net energy billing credit rate for 1/1/2020 – 12/31/2020 published on 12/2:



RATE CLASS	CMP	EMERA	ME PUBLIC
SMALL	\$0.1300	\$0.1467	\$0.1216
MEDIUM	\$0.1276	\$0.1493	\$0.1180
LARGE	\$0.1409	\$0.1511	\$0.1393

ECONOMICS | Estimated Savings of NEBC + RECs

- Detailed bidder information confidential
- Estimated utility credit savings for consortium members estimated at \$20-\$30/MWh contracted
- **10,000 MWhs = \$200,000 - \$300,000 per year**
- Sale of RECs provides additional \$20-\$40 per MWh savings in exchange for environmental claims
- **10,000 MWhs x \$25/MWh = \$250,000 per year**

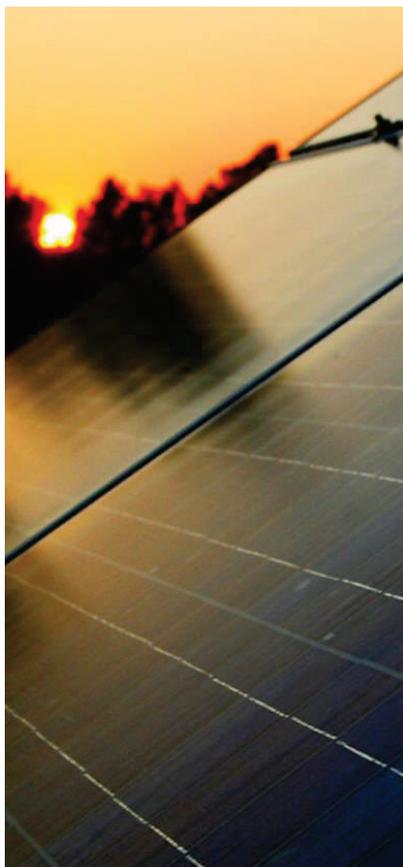
Electric load totals

- PWD Usage Is ~ 16,000 MWhs/year total
- 10,000 MWhs/year or 62.5% committed
- CES recommending up to 75% participation, max
- Annual Utility Cost, Not Usage, Is limiting factor



RISKS | Entering 20-year NEB Agreement

- **Overcommitment – Buying too many credits**
 - Contracting at 62.5% of current usage
- **Policy Risk – Shift in political winds**
 - Mitigated by the diversity of the participants
- **Cost Risk – Electricity supply and delivery rates drop by 40%**
 - Non issue - utility costs dropping by 40% would be good
 - NEB credits act as hedge against escalating prices
 - RECs provide additional revenue stream
- **Production Risk – Solar / hydro performance**
 - PWD doesn't own the projects, pays only for credits received
- **Development Risk – Projects don't get built**
 - Mitigated by contracting with 5-7 developers, 25+ projects



NEXT STEPS

Key Decisions & Timelines

NEXT STEPS | Follow-ups and Timeline



Next Steps:

- Approve 10,000 MWh commitment
- Finalize review of net billing credit agreement
- Verify legal entity executing agreements and relationship to utility account holder

TIMELINE:

- **Jan** – CES to finalize project selection
- **Jan/Feb** – All Consortium Members receive final contracts for execution. One contract with each project.



THANK YOU

NET ENERGY BILLING CREDITS AGREEMENT

This Net Energy Billing Credits Agreement (“*Agreement*”) is entered into as of _____, 2020 (the “*Effective Date*”) and is by and between _____ as a seller (the “*Seller*”), and the _____, a (“*Buyer*”). In this Agreement, Sellers and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain one or more Distributed Generation Resource(s) (such facilities, collectively, the “*Distributed Generation Resources*”);

WHEREAS, the Distributed Generation Resources are each expected to qualify for Net Energy Billing pursuant 35-A MRSA 3209-B and the customer net energy billing rules promulgated by the Maine Public Utilities Commission (“MPUC”) 65-407 C.M.R. ch. 313 (____ 2019) and will, therefore, generate Net Energy Billing Credits for MWh of electricity generated and delivered to the grid by the Distributed Generation Resources; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Sellers, the Net Energy Billing Credits generated by the Distributed Generation Resources during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Seller and Buyer agree as follows.

ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“*Applicable Legal Requirements*” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction, including the Net Energy Billing regulations, of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Distributed Generation Resource, as well as the selling and purchasing of Net Energy Billing Credits therefrom.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Commercial Operations Date” means the latter of (i) the date on which each Distributed Generating Resource generates electric energy on a commercial basis, and (ii) the date that interconnection of the Distributed Generation Resource to the local electrical distribution system has been authorized and is functioning with the LDC.

“Confidential Information” means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party and is clearly marked, or designated as “confidential” by such Party in writing. The Parties agree that the specific economic terms (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement and as to this Agreement itself: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party under an agreement with the disclosing Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) information disclosed as part of a public proceeding or meeting of the Buyer’s governing or legislative body that is held to authorize the Buyer to enter into this Agreement; (f) information disclosed pursuant to any applicable law, rule or regulation requiring such disclosure, or as compelled by legal process including, but not limited to any “public records”, the Maine Freedom of Access Law, or “freedom of information” request or pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority and (g) information that is disclosed by the receiving Party with the prior written permission of the disclosing Party.

“Distributed Generation Resource” means the _____ individual solar (PV) power electrical generation facilities, to be constructed owned, operated and maintained by Seller, with specifications for an aggregate nameplate capacity of approximately _____ MW (DC), which qualifies for Net Energy Billing, together with all appurtenant facilities required to interconnect such Distributed Generation Resource to the local electric distribution system, all to be located in _____, Maine, as described in Exhibit __, attached hereto.

“Energy” means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Distributed Generation Resource, the production of electrical energy from the Distributed Generation Resource and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂),

methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Certificates (RECs) issued by the NEPOOL Generation Information System (GIS). Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Tax Attributes. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, green tags, tradeable renewable credits and Green-e® products.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party general economic or energy market conditions shall not constitute an event of *Force Majeure*.

“Generation Contingent” means that Seller's failure to deliver is excused if the Distributed Generation Resources for any reason do not generate sufficient energy necessary to deliver Net Energy Billing Credits hereunder. In such an event, Seller shall not be liable to Buyer for any damages, except as to those related to the Performance Guaranty.

“Governmental Authority” means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, the LDC, or other similar entity, on or with respect to the Net Energy Billing Credits.

“Interconnection Agreement” shall mean the Interconnection Service Agreement(s) entered into with the LDC, each of which authorizes the interconnection of the respective Distributed Generation Resource with the local electric distribution system, which confirms the eligibility of each Distributed Generation Resource for Net Energy Billing, and which specifies (directly or by reference to the “Schedule Z” filed by Sellers under the Tariff) the manner in which Net Energy Billing Credits shall be allocated. [Schedule Z is inserted as a placeholder ...]

“Interest Rate” means 200 basis points above the prime rate as published in the Wall Street Journal, provided, however that the interest shall not exceed the maximum rate permitted by law..

“LDC” means the local electric distribution company.

“Lender” means the entity or person(s) providing financing to Seller in connection with the Distributed Generation Resources.

“Net Energy Billing” shall have the meaning set forth in 35-A M.R.S. §3209-B (1) (D) and as set forth in Chapter 313 of the MPUC rules, 65-407 C.M.R. ch. 313.

“Net Energy Billing Credits” means those bill credits as set forth in 35-A M.R.S. §3209-B (5) and as set forth in Chapter 313 of the MPUC customer net energy billing rules 65-407 C.M.R. ch. 313, §2(M), §3(K).

“Net Energy Billing Regulations” are the Maine net energy billing statute, 35-A MRSA §3209-B and the MPUC customer net energy billing rules, 65-407 C.M.R. ch. 313.

“Performance Guaranty” shall have the meaning set forth in Exhibit E.

“Renewable Energy Certificate” or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, any Tax Attributes and the Net Energy Billing Credits.

“Tariff” means the LDC’s tariff for interconnection for Commercial or Institutional Distributed Generation Resources and Net Energy Billing services, as approved by the MPUC, together with any subsequent amendments and approvals thereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Distributed Generation Resources or the output generated by the Distributed Generation Resources (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

ARTICLE II TERM

2.1 Term. The term of this Agreement (the “*Term*”) shall commence on the Effective Date and shall end with respect to each Distributed Generation Resource at the earlier of (i) 11:59 PM on the day preceding the twentieth (20th) anniversary of that Distributed Generation Resource’s Commercial Operations Date (the “*Termination Date*”), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. The Buyer may terminate this Agreement as to a Distributed Generation Resource without penalty or any liability (a) prior to the Commercial Operations Date if such Distributed Generation Resource has not achieved commercial operation within eighteen (18) months of the Effective Date, except that the eighteen (18) month time period shall be extended day-for-day for the duration of any period of Force Majeure claimed by Seller in accordance with Section 8.2 or (b) after the Commercial Operations Date if over any consecutive twelve month period, such Distributed Generation Resource generates less than fifty percent (50%) of their expected Energy over a period of twelve (12) consecutive months. (For avoidance of doubt, for this Section 2.2, the expected Energy for each 12-month period shall be as set forth in Exhibit C, attached hereto.). In the case of termination pursuant to this Section 2.2, the Buyer shall give the Seller thirty (30) days prior written notice, and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller to the Buyer and of the Buyer to the Seller, provided that the Buyer and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

ARTICLE III FACILITY OWNERSHIP AND OPERATION

3.1 Title. Title to each Distributed Generation Resource and all generation capacity credits and Tax Attributes produced or associated with each Distributed Generation Resource shall be with the Seller. Title to the Percentage of Environmental Attributes produced or associated with each Distributed Generation Resource shall be transferred to the Buyer within thirty (30) days of Seller’s receipt of each payment under Section 5.1 of this Agreement.

3.2 Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall promptly notify Buyer in writing when each Distributed Generation Resource has achieved the Commercial Operations Date.

3.3 Seller’s Operation of Facilities. Seller shall install, operate and maintain each Distributed Generation Resource in material accordance with all Applicable Legal Requirements, all equipment manufacturers’ guidelines and recommendations, and pursuant to widely accepted industry practice and shall maintain such documents and records necessary to confirm Seller’s installation, operation and maintenance of the Distributed Generation Resources in material accordance with such standards.

3.4 Seller’s Obligation To Maintain Facilities; Insurance. Seller shall maintain the Distributed Generation Resources and the individual components thereof in good working order at all times during the Term of this Agreement, subject to reasonable time allowed for

maintenance, repair and event(s) of Force Majeure. Seller shall carry insurance coverage in an amount reasonably expected to repair or replace the Distributed Generation Resources if damaged, or in an amount as required by a Lender, at Seller's discretion. For the duration of the Agreement, Seller shall carry all insurance required by Applicable Legal Requirements and Commercial General Liability Insurance, including coverage by an endorsement or otherwise for Seller's defense and indemnification obligations under the Agreement, with per occurrence limits of not less than one million dollars (\$1,000,000).

3.5 Seller's Performance Guarantee. Seller shall be responsible for construction, operation and maintenance of each Distributed Generation Resource to meet the Performance Guarantee, as set forth in Exhibit E.

ARTICLE IV PURCHASE AND SALE OF NET ENERGY BILLING CREDITS

4.1 Sale and Purchase of Net Energy Billing Credits. Commencing on the Commercial Operations Date, on a monthly basis Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept all of Seller's right, title and interest to _____% (the "Percentage") of the Net Energy Billing Credits and Environmental Attributes generated by the Distributed Generation Resource, free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description. Except as provided in Seller's Performance Guaranty, as set forth in Exhibit E, Seller's obligations under this Section 4.1 are Generation Contingent, but this shall not be construed as a waiver of the early termination provisions under Section 2.2.

4.2 Allocation. To facilitate delivery of the Net Energy Billing Credits purchased and sold pursuant to Section 4.1, Seller shall request (through completion of the applicable "Schedule Z") that the LDC allocate the quantity of Net Energy Billing Credits specified in Section 4.1 to Buyer's customer account(s), as further set forth in Exhibit A, "Buyer's Designation of Customer Accounts", attached hereto and incorporated herein. Buyer understands that the Net Energy Billing Credits received by Buyer for a particular month will be reflected on Buyer's statement from the LDC as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on Buyer's monthly invoice according to the LDC's billing cycle, which may be approximately one (1) month after the Net Energy Billing Credits are generated by the Distributed Generation Resources.

4.3 Payment. For each month of the Term, the payment that Buyer shall make to Seller for the purchase of the Percentage of Net Energy Billing Credits and Environmental Attributes (the "**Payment**") shall be determined by multiplying (a) the rate per MWh set forth in Exhibit B, attached hereto and incorporated herein, by (b) the MWhs generated and delivered to the grid by the Distributed Generation Resource as measured by the LDC that are included in the calculation of the Net Energy Billing Credits allocated to Buyer's customer account(s) for that month. The timeframe for issuance, certification, registration and delivery to the Buyer of Environmental Attributes and RECs from the Distributed Generation Resources for which payment made under this Section 4.3 is set forth in Section 6.1(b).

4.4 Buyer's Purchase Contingent on Allocation of Credits by LDC. The Parties acknowledge and agree that Buyer's agreement to purchase Net Energy Billing Credits from Seller is contingent upon and subject to the LDC's acceptance of and allocation of such Net Energy Billing Credits to Buyer's customer account with LDC as set forth in Section 4.2 herein. During the Term of this Agreement, if for any reason the LDC refuses to allocate a portion or all of the Net Energy Billing Credits to Buyer's customer accounts, Buyer's obligation to purchase such Net Energy Billing Credits shall be unenforceable and void as to the affected Net Energy Billing Credits, and Seller shall promptly refund to Buyer the Payment by Buyer for any such Net Energy Billing Credits which the LDC refused to credit to Buyer's customer accounts.

4.5 Title To Net Energy Billing Credits. Title to the Net Energy Billing Credits will pass from Seller to Buyer upon the LDC's allocation of such Net Energy Billing Credits to Buyer's customer account(s) by the LDC.

4.6 Non-Exclusive Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that (a) Buyer's agreement to purchase Net Energy Billing Credits from Seller is not exclusive, and Buyer shall have the right and ability to enter into agreements with other parties to purchase additional Net Energy Billing Credits and/or RECs, subject to all Applicable Legal Requirements, and (b) Seller's agreement to sell Net Energy Billing Credits to Buyer is not exclusive, and Seller shall have the right and ability to enter into agreements with other parties to sell additional Net Energy Billing Credits and/or RECs, subject to all Applicable Legal Requirements.

4.7 Governmental Charges.

a. Seller is responsible for any Governmental Charges currently attributable to the sale of Net Energy Billing Credits to Buyer, irrespective of whether imposed before, upon or after the allocation and delivery of Net Energy Billing Credits to Buyer. Other than the Payment set forth in Section 4.3, Buyer shall not be responsible for any taxes, government charges, costs, duties, tariffs, licenses, fees, permits, assessments, adders or surcharges, imposed or authorized by a Governmental Authority, LDC, or similar entity, that are associated with the Distributed Generation Resource, including but not limited to any charges or costs associated with metering the generation from the Distributed Generation Resource or settling such generation in the ISO-NE wholesale markets.

b. The Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges to the extent permitted by law. In the event any of the sales of Net Energy Billing Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the Party claiming such exemption shall, upon a Party's written request therefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion in a timely manner. If any sales or other tax is applicable to this Agreement in the future, Seller shall cooperate with Buyer to ensure that Buyer receives the full benefit of Buyer's tax exempt status.

ARTICLE V PAYMENT

5.1 Payment. During each monthly LDC billing cycle, Seller shall invoice Buyer for the Payment for the Net Energy Billing Credits allocated to Buyer's designated account(s) with the LDC during the prior monthly LDC billing cycle (the "**Invoice**"). Buyer shall either promptly provide its monthly LDC bill to Seller, or, shall allow Seller to access Buyer's monthly bill directly with the LDC, at Buyer's discretion. Subject to the provisions of Section 4.4, Buyer shall pay all invoiced amounts owed to Seller by a mutually agreeable method, even if the amount of Buyer's LDC bills is not sufficient to utilize all Net Energy Billing Credits allocated to Buyer. Any undisputed payment not made to Seller within thirty (30) days of the Buyer's receipt of a proper Invoice shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Seller. Such interest shall accrue at a rate equal to the Interest Rate.

5.2 Records and Audits. Each Party shall keep, for a period of not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, Invoices, charges, Environmental Attributes registrations and transfers, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during the other Party's normal business hours. Seller shall, at Buyer's request, such request to not occur more than annually, provide documentation itemized by month of the amount of total electricity generated by the Distributed Generation Resources and delivered to the grid and/or the calculation of the Net Energy Billing Credits and accountings of Environmental Attributes, including registrations and transfers.

5.3 Dispute. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and the obligated Party shall pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate, from and including the due date through and including the date such payment is actually received by Seller. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments at the option of the overpaying Party with interest accrued at the Interest Rate from the date payment was made to the date payment is returned by the receiving Party. The Parties shall only be entitled to dispute an amount owed or paid within twenty-four (24) calendar months from the date of issuance of such Invoice. If the Parties are unable to resolve a payment dispute, the Parties shall follow the procedure set forth in Section 12.5.

ARTICLE VI OBLIGATIONS OF THE PARTIES

6.1 Net Energy Billing.

a. Each Party's obligations under this Agreement are subject to each Distributed Generation Resource qualifying for Net Energy Billing pursuant to the Net Energy Billing Regulations. If, within twelve (12) months from the Effective Date, a Distributed Generation Resource does not so qualify, this Agreement shall automatically terminate with regards to that Distributed Generation Resource without further liability of the Seller to the Buyer and of the

Buyer to Seller, provided that the Buyer and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

b. Subject to the provisions of this Agreement, each Party agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Distributed Generation Resources to be eligible for and participate in Net Energy Billing and issuance, qualification, certification, registration and delivery of RECs from the Distributed Generation Resources to the Buyer. Seller shall apply for and procure the issuance, registration and certification of RECs and any other Environmental Attributes for all MWh generated and delivered to the grid by the Distributed Generation Resources. Seller shall transfer the Percentage of all Environmental Attributes to Buyer within ninety (90) days of Seller obtaining right, title or interest to the Environmental Attribute(s). If Seller fails to (i) procure the issuance, registration and certification of RECs and any other Environmental Attributes within one-hundred eighty (180) days of the subject MWh being generated and delivered to the grid by the Distributed Generations Resources or (ii) fails to deliver RECs to Buyer within one-hundred eighty (180) days of the subject MWh being generated and delivered to the grid by the Distributed Generations Resources, then after providing Seller with ten (10) days written notice and an opportunity to cure, Buyer may commercially purchase RECs and any other Environmental Attributes reasonably equivalent to those that Seller failed to deliver and Seller shall be liable for Buyer's costs and fees, including attorney's fees, associated with such purchase. Buyer may offset costs and fees incurred in accordance with this subsection against any Payment to Seller.

c. So long as any such amendment will materially benefit a Party without material detriment to the other Party and is otherwise permitted by law, the Parties commit to each other in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to Net Energy Billing rule(s) or regulation(s) and NEPOOL GIS qualification and ensure that the Distributed Generation Resource is eligible for Net Energy Billing and REC issuance under the GIS rules.

d. Upon implementation by the MPUC or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for Net Energy Billing, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

6.2 Seller's Obligations.

a. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority or the LDC.

b. Seller shall file with the LDC in a timely manner the initial Schedule Z (as set forth in Exhibit A) and any modifications to that Schedule Z or any subsequent Schedule Z as directed by Buyer in accordance with this Agreement and Applicable Legal Requirements.

c. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

6.3 Buyer's Obligations.

a. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

b. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement, which cooperation shall include, but not be limited to, timely providing (or to the extent possible, reasonably facilitating that the LDC timely provides) to Seller full and complete information regarding the value of any Net Energy Billing Credits that have been allocated to Buyer's customer account(s) by the LDC.

ARTICLE VII REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; BUYER'S COVENANTS

7.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party as follows.

a. The Party is duly organized, validly existing, and in good standing under the laws of Maine.

b. The Party has full legal capacity to enter into and perform this Agreement.

c. The execution, delivery and performance of the Agreement and the consummation of the transaction hereunder have been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

d. The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate or conflict with any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

e. There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

7.2 Forward Contract; Bankruptcy Code. Seller asserts that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. The Seller further assert that Seller is not a "utility", as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

ARTICLE VIII
TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

a. The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed and such failure continues for a period of five (5) Business Days after receipt of written notice of such nonpayment.

b. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from another Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same, provided that such extended cure period shall be no longer than ninety (90) days and further provided that the cure periods in this section shall not apply to and do not constitute a waiver of the early termination provision in Section 2.2 of this Agreement.

c. Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements or representations and warranties of this Agreement.

d. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) except for assignments made pursuant to Section 10.1 (regarding financing), makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) except for exercise of possession through assignments made pursuant to Section 10.1 (regarding financing), has a secured party take possession of all or substantially all of its assets, a Distributed Generation Resource, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure* a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, as soon as reasonably practicable after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period and extent of delay or interruption of such Party's performance hereunder; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

8.3 Termination for Default.

a. Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) Business Days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as of the date set forth in the Notice.

b. In the event this Agreement is terminated as a result of an Event of Default, (i) Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Net Energy Billing Credits from Seller, provided, however, that Buyer shall pay Seller for any Net Energy Billing Credits generated by Seller that have or may continue to be allocated to Buyer by the LDC, and (ii) Seller shall notify the LDC immediately to stop any future Net Energy Billing Credits allocation to Buyer forthwith, and shall promptly provide a copy of such notification to Buyer.

**ARTICLE IX
REMEDIES AND LIMITATION OF LIABILITY**

9.1 Remedies. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance or termination of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.

9.2 Limitation of Liability. WITH THE EXCEPTION OF SELLER'S OBLIGATIONS SET FORTH IN THE FOLLOWING SECTION 9.3, NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF ANY OF THE PARTIES RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER

THEORY AT LAW OR EQUITY. FOR THE AVOIDANCE OF DOUBT, IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY.

9.3 Indemnification. Notwithstanding anything to the contrary in Section 9.2, Buyer shall not be responsible or liable for any personal injury or property damage caused by or occurring upon the Distributed Generation Resource, its site, or any individual component thereof. Seller shall defend, indemnify and hold harmless Buyer, its officers, directors, agents, and employees from and against any and all claims, demands, liens, lawsuits, judgments or actions of any nature that may be brought on account of the construction, installation, operation, maintenance, repair or replacement of the Distributed Generation Resource or any component thereof.

a. THIS DEFENSE AND INDEMNIFICATION OBLIGATION IS INTENDED TO WAIVE AS BETWEEN THE PARTIES ANY EXCLUSIVITY-OF-REMEDY DEFENSE OR EMPLOYER IMMUNITY PROVISIONS THAT MAY OTHERWISE BE AVAILABLE TO SELLER UNDER WORKERS' COMPENSATION OR SIMILAR LAWS.

b. **Nothing in the Agreement shall, nor is intended to, waive any defense, immunity or limitation of liability which may be available to Buyer or their respective officers, agents and employees, under the Maine Tort Claims Act or any other privileges and/or immunities provided by law.**

9.4 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or term under this Agreement shall be deemed to have been waived by a Party, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's duly authorized agent. Consent or approval of a Party to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve any other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of a Party to insist upon the strict performance of any one of the covenants or terms of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or term, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of a Party herein specified or any other right or remedy that a Party may have at law, in equity or otherwise upon breach of any covenant or terms herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any

default under the covenants or terms of this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. No Party shall assign or in any manner transfer this Agreement or any part thereof without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld or delayed, except that no prior written consent but only written notification to Buyer shall be required in connection with any assignment by a Seller in connection with the financing of or tax equity investment in a Distributed Generation Resource.

10.2 Collateral Assignment; Financing Provisions.

a. Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Distributed Generation Resource. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Distributed Generation Resources. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Buyer agrees as follows:

i. Consent to Collateral Assignment. Buyer hereby consents to both the sale of the Distributed Generation Resources to a Lender and the collateral assignment for the financing of the Seller's right, title and interest in and to this Agreement.

ii. Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. After notice to Buyer that Seller has defaulted under the financing, the Lender, as owner of the Distributed Generation Resources, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Distributed Generation Resources. Seller hereby authorizes Buyer to rely on any such notice, to accept performance of any such rights by Lender and to make payments of amounts due hereunder to Lender, and Seller releases and discharges Buyer of, and from any liability to Lender on account of any such payments;

(B)

(B) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Distributed Generation Resource by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined

below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Except as set forth in Article 8, any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Buyer may, in Buyer's complete discretion, elect to enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after expiration of the periods provided for in this Agreement; provided that if Seller's default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period. In the event that Lender does not effectuate cure within the time periods specified herein, Buyer shall not be obligated to accept later cure of any default hereunder, but may, at any time after expiration of such periods, exercise any termination rights available under this Agreement.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control by receivership or otherwise, of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all material defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then the Lender or its assignee shall no longer be in default under this Agreement, and provided that after such change in title or control Buyer shall continue to receive all the Net Energy Billing Credits due to it as set forth in this Agreement, this Agreement shall continue in full force and effect as a direct contract between the Lender or its assignee, as Seller, and Buyer, provided that Buyer shall not be obligated to pay any sums to any assignee of Lender until Buyer has received notice from such assignee that it has succeeded to such interest.

(b) Lender a Third Party Beneficiary. Buyer agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees, at Seller's sole cost and expense, to execute such consents to assignment, estoppel certificate or acknowledgements as may be reasonably requested by Seller and/or Lender in connection with the financing or sale of the Distributed Generation Resources, pursuant to this Section 10.2 and which do not change or alter any material term of this Agreement.

**ARTICLE XI
AMENDMENT FOR FINANCING**

11.1 Obligation to Modify the Agreement for Financing. If a Lender requires this Agreement to be modified, or if a Seller, in good faith, requires the Agreement to be modified in order to finance, develop or operate a Distributed Generation Resource, and in each case the modifications are reasonable and do not materially impact the terms of the Agreement, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the original intent of this Agreement in a timely manner. To the extent that Buyer incurs costs or fees, including attorneys' fees, as a result of its efforts to accommodate a modification to the Agreement under this Section 11.1, Seller shall be liable to Buyer for such costs and fees. If the Parties, negotiating in good faith, cannot agree on such amendments, or if a Seller determines in good faith that the Agreement cannot be amended to allow the Distributed Generation Resource to be financed, developed or operated in a commercially reasonable manner, then the terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate as to that Distributed Generation Resource without further liability of the Seller to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

**ARTICLE XII
MISCELLANEOUS**

12.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; and email with receipt confirmed by email or in writing by recipient, and shall be sent to the following addresses:

If to Seller:

If to Buyer:

Any Party may change its address and contact person for the purposes of this Section 12.1 by giving notice thereof in the manner required herein.

12.2 Confidentiality. Except as provided in this Section 12.2, no Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party' prior express written consent.

a. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, actual or potential Lenders (with respect to Seller), advisors, consultants, agents, officers, directors, members, and employees who have a need to know related to this Agreement.

b. If required by any law, statute, ordinance, decision, or regulation or pursuant to any order issued by a court, governmental agency or authority having jurisdiction over a Party, that Party may release or disclose Confidential Information, or a portion thereof, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits.

12.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired, and provided further, however, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Maine without regard to principles of conflicts of law. If, due to any change in Applicable Legal Requirements or the interpretation thereof by any court of law or other governing body having jurisdiction subsequent to the Effective Date, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the Parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

12.5 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.5 shall be the exclusive mechanism to resolve

disputes arising under or related to this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot timely resolve a dispute, by informal negotiations, the sole venue for judicial enforcement shall be the courts of Maine. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Maine in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

c. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to a form of alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

12.6 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

12.7 Press Releases and Use of Buyer's Name and Logo.

a. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, or the sale or purchase of Net Energy Billing Credits. Each Party shall have the right to approve (with such approval not to be unreasonably withheld, conditioned or delayed) any publicity materials, press releases, or other public statements by another Party that refer to, or that describe, any aspect of this Agreement, or the sale or purchase of Net Energy Billing Credits. No such releases or other public statements (except for filings or other factual statements or releases as may be required by Applicable Legal Requirements) shall be made by any Party without the prior written consent of the other Party. No Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other Party, provided that such consent may require the Parties to execute a separate trademark licensing agreement.

b. Seller shall not use Buyer's name or logo, or the logo of Buyer's affiliates, in any marketing materials or statements regarding this Agreement without prior written consent from Buyer.

12.8 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership,

agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.

12.9 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns.

12.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

12.11 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

12.12 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

12.13 Survival. The provisions of Sections 3.1 (Title), 4.5 (Title to Net Energy Billing Credits, 5.1 (Payment), 5.3 (Dispute), 8.3 (Termination for Default), 9.1(Remedies), 9.2 (Limitation of Liability), 9.3 (Indemnification, 9.4 (Waivers), and Article 12 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement. The provisions of Section 5.2 (Records and Audits) shall survive the expiration or earlier termination of this Agreement for a period of six (6) years.

12.14 No Third-Party Beneficiaries. Except as set forth in Section 10.2(b), this Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, except that this Section 12.14 shall not limit the rights of a Lender pursuant to Section 10.2.

[Signature page to follow.]

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

BUYER

By: _____
Name: _____
Title: _____

SELLER

By: _____
Name: _____
Title: _____

List of Exhibits to Agreement

Exhibit A – Buyer’s Designation of Customer Accounts

Exhibit B – Price

Exhibit C – Projected Monthly Energy

Exhibit D – Distributed Generation Resource(s) description(s)

EXHIBIT A

BUYER'S DESIGNATION OF CUSTOMER ACCOUNTS

[Include listing of Initial Buyer's Customer Accounts]

Incorporate language that allows Buyer in its sole discretion to modify the list of accounts providing that the total Percentage does not change.

DRAFT

**EXHIBIT B
PRICE**

Year	\$/MWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

EXHIBIT C
PROJECTED MONTHLY ENERGY

DRAFT

Exhibit D

DISTRIBUTED GENERATION RESOURCE DESCRIPTION(S)

Project Size	[INSERT] MW DC
Service Territory	[Central Maine Power Company/Emera Maine]
Service Load Zone	Maine
Project Coordinates	[INSERT], [INSERT]
Town	[INSERT], ME
Expected Generation (Year 1)	[INSERT]

DRAFT

Exhibit E

PERFORMANCE GUARANTY

Performance Guaranty. Seller guarantees that during the term of the Agreement, the Distributed Generation Resource will generate the guaranteed Megawatt-hours (MWh (AC)) (“**Guaranteed MWh (AC)**”) of energy set forth as follows:

A. Commencing on the second anniversary of the Commercial Operation Date of a Distributed Generation Resource, if on that date and on each successive twenty-four (24) month periods thereafter, the Actual MWh (AC) (defined below) generated by the Distributed Generation Resource and credited to Buyer’s account(s) over the prior 24-month period is *less* than the Guaranteed MWh (AC) (defined below) over that same 24-month period, then Seller will pay Buyer an amount equal to the difference between the Guaranteed MWh (AC) and the Actual MWh (AC) multiplied by the Guaranteed Energy Price per MWh (AC) (defined below) for that same 24-month period.

B. “**Guaranteed MWh (AC)**” means an AC electricity produced equal to 70% of the Expected Annual Energy Production for a 24 month period as set forth in Exhibit C, subject to the exclusions in Section 2.

C. “**Actual MWh (AC)**” means the AC electricity generated and delivered to the grid by the Distributed Generation Resource in MWh credited by the LDC to Buyer’s account(s) during each 24-month period beginning on the second anniversary of the Commercial Operations Date.

D. “**Guaranteed Energy Price per MWh (AC)**” means (a) the positive difference, if any, between (i) the average net energy billing tariff rate as set by the Maine Public Utilities Commission over the 24-month period (expressed on a per MWh (AC) basis) and (ii) the rate per MWh (AC) set forth in Exhibit B, (b) plus \$20 per MWh (AC).

2. **Exclusions.** The Performance Guaranty shall be suspended for the duration of a Force Majeure event affecting the electricity production of the entire Distributed Generation Resource. To the extent that a Force Majeure event affects energy production of an individual component(s), the Guaranteed MWh (AC) shall be adjusted on a pro-rata basis to reflect such event.

3. **Payments.** Seller will make any payments owed to Buyer under this Exhibit E within sixty (60) days after the end of the relevant 24-month period and subject to the terms of Section 5.3.

4. **Liquidated Damages.** The Parties agree that actual damages to Buyer for breach of the Performance Guaranty is difficult to ascertain, and the applicable payment amount set forth in this Exhibit E is not a penalty but is a reasonable approximation of the damages suffered by Buyer in the event the Seller fails to meet the Performance Guaranty.



Portland Water District
From Sebago Lake To Casco Bay

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6C Order 20-002
Date of Meeting: January 27, 2020
Subject: Allocation of 2019 Water Fund Surplus
Presented By: David Kane, Treasurer

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, the 2019 annual operating fund change in the Water Fund is hereby allocated to the following items:

- Addition to the operating surplus fund to bring the balance up to the Board's target balance of 25% of total budget;
- Reduction of planned May 1, 2020 rate adjustment by approximately a half percent resulting in a decrease in 2020 revenues of approximately \$100,000;
- Creation of a Rate Stabilization Fund with a \$300,000 balance; and
- Creation of a fund with the remaining balance dedicated to pay for costs related to master plan development and asset assessments.

BACKGROUND ANALYSIS

Finance results through November show the Water Fund with an annual surplus of \$1.2 million. Though the surplus will likely decline as we finalize the results for the year, it is anticipated the fund should have a significant annual surplus balance. The good financial results are due to lower expenses than anticipated (see Attachment A). Some of the ways the surplus balance can be used are listed below:

- Water Rate Reduction and/or Refund.
- New Dedicated Reserve
 - Master Plan Development
 - Main Condition Assessment
 - Sebago Clean Waters Fund
- Operating Reserve Contribution: Operating Reserve is 26% of budget, 1% higher than target. The 12/31/2018 balance is \$6.8 million.
- Watershed Protection Fund Contribution: Per state law, the District may allocate any surplus balance generated from operations up to 5% of total revenue annually to the Water

Supply Protection Fund. Based on preliminary 2019 results, up to \$1,250,000 may be allocated to the fund. The current balance is \$2.0 million.

- Renewal and Replacement Fund Contribution: Projected 12/31/19 balance is \$6.2 million.
- Reduce 2020 Water General/407 Zone Bond: The 2020 Budget includes issuing \$7 million bond.

LEGAL REVIEW

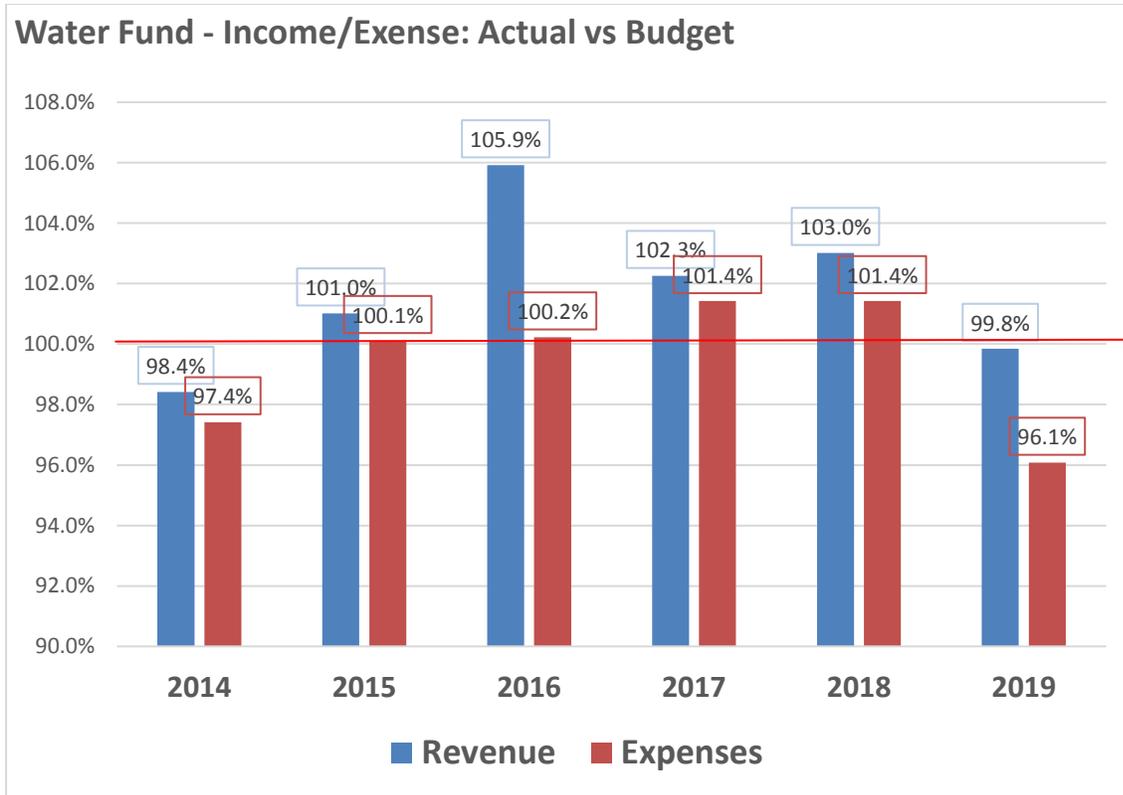
Corporate Counsel reviewed the proposed motion and approved it as to form.

CONCLUSION(S)

The Committee discussed the options and recommended the motion above be forwarded and approved by the Board.

ATTACHMENT(S)

A. 2019 Actual Results vs Budget



Through November, the Water Fund surplus is \$1.3 million. Revenues is projected to be almost the same as budgeted as lower Water Sales were offset by higher Interest Income on Investments. The surplus was mostly derived by lower expenses. Some of the significant expense variances are as follows:

- Salaries/Wages: Temporary positions were not filled due to tight labor market. Due to staff turnover, wages were lower during the hiring transition.
- Contractor Construction: Tight labor market caused several projects to be postponed.
- Paving: Main leaks projects were in locations that resulted in lower paving costs.
- Administration: The delay in the Cayenta implementation resulted not expensing the software maintenance costs.

Expense variance to budget will be greater than 2% for the first time since 2014.



Portland Water District
From Sebago Lake To Casco Bay

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6D Order 20-003
Date of Meeting: January 27, 2020
Subject: Water Rates Adjustment
Presented By: David Kane, Executive Director of Administration

RECOMMENDATION

The following proposed language is presented for Board of Trustee approval:

ORDERED, pursuant to Board of Trustees Policy, the Treasurer shall prepare the supporting documents for a water rate increase of approximately 2.9% with new rates to be effective May 1, 2020; and

ORDERED, the District will allocate 1% of the proposed increase to the capital reserve fund to finance the installation of water mains included in the System Infrastructure Assessment report.

BACKGROUND ANALYSIS

The Board of Trustees approved the 2020 budget assuming an average water rate increase of 3.5% with a target effective date of May 1, 2020. Additional information was provided to Administration and Finance Committee at their January 13, 2020 meeting and the Committee decided to reduce the rate adjustment by approximately half of a percent. The reduction reduces the 2020 Revenue by approximately \$100,000.

Staff will prepare the supporting documentation and arrange to hold a public hearing in March and send customer notices about the public hearing to all customers. Significant decisions to be made by the Board are listed below.

Revenue Requirement – How much do we need to operate?

The 2020 net expenditure operating budget is \$25.7 million as approved by the Board. Due to the expected significant increase in debt service related primarily to water main renewal projects and 407 pressure zone improvements, the operating budget is expected to grow to \$31.5 million by 2024. Consistent with the Board policy of gradual annual rate adjustments, the Committee proposes an increase of 2.9% in 2020.

Reserves – How much do we want to include for operating fund reserves?

The 2020 water budget assumed a 3.5% rate adjustment would generate \$25.7 million in revenue resulting in an operating net income of \$1,473. The recommended 2.9% rate adjustment would result in a loss of approximately \$101,473, with the loss covered by the Operating Surplus balance.

	<u>12/31/2019</u>	<u>12/31/2020</u>	<u>Target</u>
Operating	\$6.8	\$ 6.7M	\$ 6.6M
Watershed Land Protection	\$1.9	\$ 1.9M	\$ 3.8M
Capital Reserve	\$0.6	\$ 0.7M	None

Water Consumption – How much do we assume customers will use?

The budget assumed consumption of 8.3 million hundred cubic feet (HCF). Actual consumption for the years between 2014 and 2019 ranged from 8.2 million HCF to 8.8 million HCF with 2019 having 8.2 million HCF. Staff recommends using the consumption at the lower end of the recent actual consumption range (i.e. 8.3 million HCF).

Rate Design – How should the rate adjustment be allocated?

The last cost of service study indicated that industrial/commercial customers generate less revenue than the costs to serve them. The Board requested that the gap be closed over future rate adjustments by increasing rates at higher increments for industrial/commercial customers. The proposed rate schedule will continue to have larger commercial customers’ rates increase 150% of the small residential customers’ rates increase.

Regulatory Process – What regulatory process will be used?

The water rate adjustment no longer needs Maine Public Utilities Commission approval in addition to the Board of Trustees approval. Per Board policy, information will be available for public review in February and a public hearing on the proposed rate adjustment will be held in March.

The proposed schedule to implement the rate adjustment is as follows:

- November 25, 2019 Board approves 2020 Budget.
- January 13, 2020 Administration and Finance Committee reviews and makes final recommendation to be sent to customers. Finance staff will provide up-to-date financial information and revenue projections.
- January 27, 2020 Board considers approving Administration and Finance Committee’s recommendation.
- February 10, 2020 Supporting documentation for rate adjustment is available to the Public
- February 24, 2020 Publish notice of rate adjustment and provide notice to all customers. Notice is mailed to all customers and includes an invitation to attend the public hearing.
- March 9, 2020 Special public hearing on proposed rate adjustment. General Manager and Treasurer provide information supporting the rate adjustment. Public has an opportunity to ask questions and provide feedback to the Board as they consider the proposed rate schedule.

- March 23, 2020 Board business meeting – Approve final rate schedule. The final rate schedule incorporates changes based on the public hearing and Board’s feedback.
- April 24, 2020 File final rate schedule based on public hearing and Board review. Rate schedule is distributed to Maine Public Utilities Commission for informational purposes only.
- May 1, 2020 Rate adjustment effective date.

Water Rate Adjustment Impact

The customer impact of the proposed 2.9% increase is compared to the 2020 Budget 3.5% increase in the table below:

<u>Typical Customer Increases</u>		2019	3.5% Increase	2.9% Increase	
			2020		
Residential	.62" meter, 7 HCF	\$ 24.39	\$ 25.11	\$ 25.00	\$ (0.11)
Commercial	.75" meter, 80 HCF	\$ 188.75	\$ 196.13	\$ 194.78	\$ (1.35)
Small Industrial	2" meter, 1,300 HCF	\$ 1,857.46	\$ 1,944.21	\$ 1,926.24	\$ (17.97)
Large Industrial	8" meter, 56,000 HCF	\$ 60,115.10	\$ 62,949.46	\$ 62,382.42	\$ (567.04)
Sprinkler	6" meter	\$ 447.20	\$ 462.85	\$ 460.17	\$ (2.68)
Public Fire (per year)		\$ 1,461,684.00	\$ 1,512,678.00	\$ 1,503,907.00	\$ (8,771.00)
Seasonal (per year)	.62" meter	\$ 234.84	\$ 243.04	\$ 241.63	\$ (1.41)
Total Revenue			\$ 25,686,370	\$ 25,584,572	\$ (101,798.19)

LEGAL REVIEW

Corporate Counsel reviewed the proposed motion and approved it as to form.

CONCLUSION(S)

The Administration and Finance Committee recommends forwarding the motion supporting a 2.9% rate adjustment.

ATTACHMENT(S)

Attachment A – Financial Results through November 2019

Attachment B – Unaudited Water Revenue Results through December 2019

November 2019 Results		Water Division Operating Fund				
Water Sales data (YTD) for last five years is shown below:						
	2015	2016	2017	2018	2019	Average 2015-2019
Actual	\$ 20,076,905	\$ 21,444,884	\$ 21,342,487	\$ 22,248,534	\$ 22,507,821	\$ 21,524,126
Budget	\$ 21,690,890	\$ 22,213,173	\$ 22,800,978	\$ 23,650,742	\$ 24,817,595	\$ 23,034,676
% of budget	92.6%	96.5%	93.6%	94.1%	90.7%	93.4%
Usage (HCF)	7,958,270	8,199,438	7,870,330	7,913,427	7,475,769	7,883,447
Operating Fund Summary YTD % =		91.7%				
			Actual	Budget	YTD Percent	YTD Diff \$
Revenue						
	Water Sales		\$ 22,507,821	\$ 24,817,595	90.7%	\$ (241,641)
	Other Income		331,083	374,114	88.5%	\$ (11,855)
	Interest Income		475,094	285,521	166.4%	\$ 213,367
	FEMA Reimbursement		-	-	n/a	\$ -
						\$ -
			23,313,998	25,477,230	91.5%	\$ (40,130)
Expense						
	Operating Expense		13,739,302	16,405,798	83.7%	\$ (1,299,346)
	Renewal & Replacement		3,021,108	3,285,447	92.0%	\$ 9,448
	Debt Service		5,328,163	5,783,554	92.1%	\$ 26,572
			22,088,572	25,474,799	86.7%	\$ (1,263,327)
Current Year Surplus (Deficit)			1,225,426	2,431		

The 2020 budget projected a 2019 surplus of \$0.7 million. Through November, the results improved to \$1.2 million. the usual year-end expense close out process the full year results are expected to be closer to \$1.0 million.

Water Revenues for the Month Ending December 31, 2019

Comments:
 - Total water sales revenue for the year is budgeted at \$24.82 million based on consumption of 8.39 million HCF.
 - Total water revenue is behind \$254k YTD 2019 budget or -1%. To offset a portion of this, other revenue, which is made of customer penalties and interest on overdue A/R, is over budget by \$89.7k (1.28%). This 2019 budget was highly conservative with a newly implemented fee, thus the surplus will continue to grow over time. We have adjusted the 2020 budget to reflect this fee accordingly.
 - Residential consumption is 37.3k HCF behind budget as well as Residential Revenue by \$125k or -0.9%. The variance between 2018 YTD Revenue and Actual 2019 YTD is positive \$235.3k.
 - Industrial revenue remains behind budget by \$126.2k or 121k HCF. The two customers keeping it under budget are Yarmouth Water District/Wyman Energy and Cabine Energy, which are both energy manufacturers. Yarmouth has a lower summer usage trend and came to 76% of budget whereas Cabine has been sporadic and had plant shutdowns in the past causing 84% of budget. This is offset by Sappi Paper landing at 120% of their YTD consumption budget.

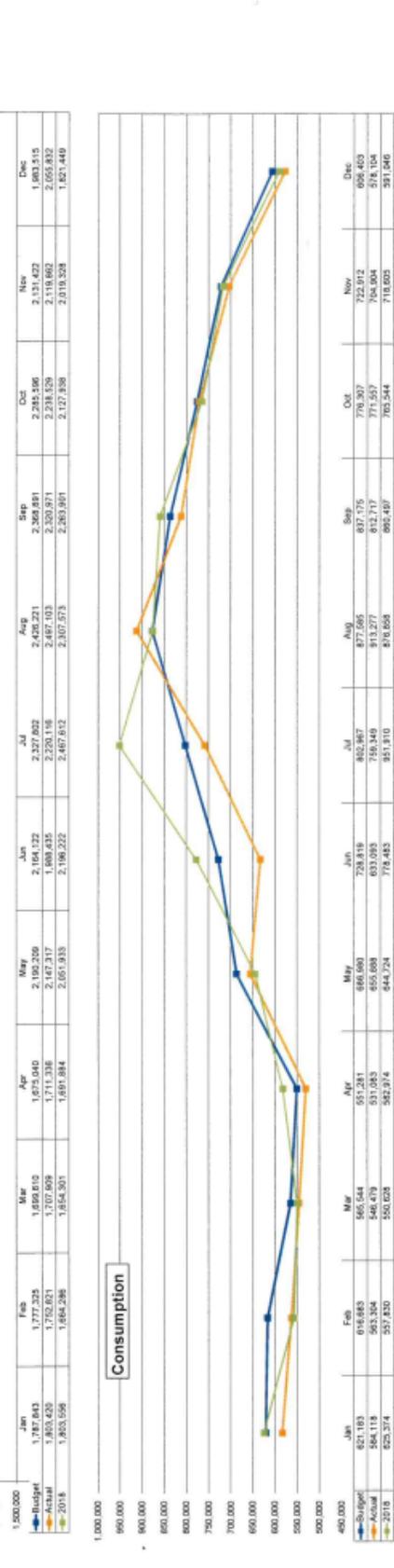
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Residential	\$ 1,057,114	\$ 1,025,663	\$ 995,792	\$ 1,018,261	\$ 1,016,142	\$ 1,176,239	\$ 1,338,968	\$ 1,502,969	\$ 1,394,827	\$ 1,286,942	\$ 1,143,321	\$ 1,234,895	\$ 14,253,532
Commercial	\$ 302,630	\$ 325,868	\$ 310,504	\$ 312,321	\$ 340,061	\$ 358,091	\$ 407,502	\$ 484,500	\$ 453,850	\$ 416,270	\$ 378,152	\$ 372,808	\$ 4,462,413
Industrial	\$ 117,600	\$ 117,600	\$ 121,313	\$ 95,765	\$ 124,904	\$ 134,499	\$ 100,491	\$ 184,341	\$ 193,974	\$ 146,009	\$ 121,717	\$ 130,014	\$ 1,603,792
Public	\$ 40,087	\$ 60,963	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 62,840	\$ 628,400
Seasonal	\$ 116,717	\$ 116,717	\$ 116,717	\$ 116,717	\$ 116,717	\$ 116,717	\$ 121,807	\$ 121,807	\$ 121,807	\$ 121,807	\$ 121,807	\$ 121,807	\$ 1,438,674
Private Fire	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 89,734	\$ 1,116,847
Other Revenue	\$ 12,150	\$ 10,180	\$ 13,492	\$ 11,931	\$ 9,461	\$ 19,265	\$ 12,862	\$ 14,572	\$ 17,172	\$ 12,007	\$ 12,268	\$ 14,340	\$ 159,707
Total	\$ 1,803,420	\$ 1,752,621	\$ 1,707,909	\$ 1,711,336	\$ 2,147,317	\$ 1,989,435	\$ 2,220,116	\$ 2,487,103	\$ 2,320,971	\$ 2,238,629	\$ 2,119,062	\$ 2,055,832	\$ 24,903,653

Year-to-Date Revenue Actual vs Budget	2018 Actual		2019 Actual		Variance	%
	Actual	Budget	Actual	Budget		
Residential	\$ 14,253,532	\$ 14,378,908	\$ 14,378,908	\$ 125,376	\$ (125,376)	-0.9%
Commercial	\$ 4,462,413	\$ 4,475,244	\$ 4,475,244	\$ (12,831)	\$ (12,831)	-0.3%
Industrial	\$ 1,603,792	\$ 1,730,004	\$ 1,730,004	\$ (126,212)	\$ (126,212)	-7.3%
Public	\$ 628,400	\$ 628,400	\$ 628,400	\$ (0)	\$ (0)	0%
Seasonal	\$ 621,426	\$ 649,960	\$ 649,960	\$ (28,534)	\$ (28,534)	-4.4%
Private Fire	\$ 1,438,674	\$ 1,441,906	\$ 1,441,906	\$ (3,232)	\$ (3,232)	-0.2%
Other Revenue	\$ 159,707	\$ 159,707	\$ 159,707	\$ (0)	\$ (0)	0%
Total	\$ 24,903,653	\$ 24,817,995	\$ 24,817,995	\$ (85,658)	\$ (85,658)	-0.3%

Year-to-Date Revenue Actual vs Budget	2018 Actual		2019 Actual		Variance	%
	Actual	Budget	Actual	Budget		
Monthly	\$ 21,226,658	\$ 21,553,668	\$ 21,553,668	\$ (326,730)	\$ (326,730)	-1.5%
Seasonal	\$ 621,426	\$ 649,960	\$ 649,960	\$ (28,534)	\$ (28,534)	-4.4%
Fire & Other	\$ 2,715,269	\$ 2,613,947	\$ 2,613,947	\$ 101,321	\$ 101,321	3.8%
Total	\$ 24,563,353	\$ 24,817,575	\$ 24,817,575	\$ (253,942)	\$ (253,942)	-1.0%

Year-to-Date Consumption (HCF) Actual vs Budget	2018 Actual		2019 Actual		Variance	%
	Actual	Budget	Actual	Budget		
Residential	4,226,792	4,364,176	4,364,176	(137,384)	(137,384)	-3.1%
Commercial	1,593,317	2,038,879	2,038,879	(43,562)	(43,562)	-2.1%
Public	508,205	542,437	542,437	(34,232)	(34,232)	-6.3%
Industrial	1,325,559	1,450,348	1,450,348	(124,789)	(124,789)	-8.6%
Total	8,053,873	8,393,840	8,393,840	(339,967)	(339,967)	-4.1%

YTD Consumption 2018 to 2019 Actual	2018 Actual		2019 Actual		Variance	%
	Actual	Budget	Actual	Budget		
Residential	4,433,917	4,600,000	4,433,917	(166,083)	(166,083)	-3.6%
Commercial	2,022,971	2,038,879	2,022,971	(15,908)	(15,908)	-0.8%
Public	546,104	542,437	546,104	3,667	3,667	0.7%
Industrial	1,501,481	1,752,922	1,501,481	(251,441)	(251,441)	-14.3%
Total	8,504,473	8,934,238	8,504,473	(429,765)	(429,765)	-4.8%



Month	Revenue	Consumption
Jan	1,803,420	821,183
Feb	1,752,621	818,683
Mar	1,707,909	665,544
Apr	2,147,317	546,479
May	1,989,435	563,344
Jun	2,220,116	557,830
Jul	2,220,116	557,830
Aug	2,487,103	557,830
Sept	2,320,971	557,830
Oct	2,238,629	557,830
Nov	2,119,062	557,830
Dec	2,055,832	557,830
Total	24,903,653	5,911,440



Portland Water District
From Sebago Lake To Casco Bay

BOARD OF TRUSTEES / AGENDA ITEM SUMMARY

Agenda Item: 6E Resolution 20-002
Date of Meeting: January 27, 2020
Subject: Southern Maine Regional Water Council Representative
Presented By: Carrie Lewis, General Manager

The Board of Trustees must annually appoint a representative to serve on the Southern Maine Regional Water Council. Presently, Chris Crovo is the District's representative.

Pursuant to the Council's bylaws, the District's appointment would be confirmed by the membership at the next annual meeting, which will occur in April 2020. The period of appointment as PWD's representative will be for the period January 1, 2020 through December 31, 2020.

The following motion is proposed:

BE IT RESOLVED, that Christopher Crovo is appointed as Portland Water District's representative to the Board of Directors of the Southern Maine Regional Water Council.