

# Orange and Rockland Utilities, Inc.

## CAPACITY RELEASE SERVICE AGREEMENT

Capacity Release Agreement No. \_\_\_\_

This Capacity Release Service Agreement (the "Agreement") is entered into as of **August , 2010** by and between **Orange and Rockland Utilities, Inc.** ("O&R"), \_\_\_\_\_ ("Qualified Seller" as that term is defined in O&R's Schedule for Gas Service-PSC No. 4) and, \_\_\_\_\_ Qualified Seller's Agent/Designee ("its Agent"), if an Agent is so designated below.

### WITNESSETH:

**WHEREAS**, O&R desires to release its rights and obligations to certain entitlements of transportation capacity on interstate pipelines; and

**WHEREAS**, Qualified Seller and its Agent (if any) desires to assume such rights and obligations.

**NOW, THEREFORE**, in consideration of the premises and covenants contained herein, O&R, Qualified Seller and its Agent (if any) agree as follows:

1. **Release and Assumption.** Subject to the terms and conditions hereof, O&R will release its capacity rights and obligations (as set forth in the service agreements of certain releasing interstate pipelines) and the Qualified Seller and/or its Agent will assume those rights and obligations, effective November 1, 2010, for service under the releasing pipelines' respective Rate Schedules (all such capacity is hereafter referred to as the "Released Capacity" and all such pipelines as "the Pipelines"), based on Qualified Seller's projected firm customer pool as of November 1, 2010. On or about October 1, 2010, O&R will send an electronic mail notification ("Email Notification") to the Qualified Seller and/or its Agent advising it of the specific Pipelines and quantities per day of delivery capacity that it is releasing to Qualified Seller for the annual period commencing on November 1, 2010. Unless Qualified Seller and/or its Agent, within two (2) business days of its receipt of the Email Notification, notifies O&R via return Email that Qualified Seller rejects or seeks to revise the Email Notification, the Email Notification shall be binding upon the Parties. Any requested revisions to the Email Notification must be accepted by O&R by sending a revised Email Notification to Qualified Seller before they will be binding upon the Parties. The quantity of Released Capacity may increase or decrease from month to month during the period from November 1, 2010 through October 31, 2011 to the extent necessary to reflect changes in Qualified Seller's firm customer pool after November 1, 2010. Changes in the amount of Released Capacity will be (i) reflected on the applicable Pipeline(s) electronic bulletin board(s) and (ii) sent by O&R via Email Notification to the Qualified Seller and shall be subject to all of the terms and conditions set forth in this Agreement.
2. **Conditions.** This release and assumption is conditioned upon the following:
  - (A) Qualified Seller and/or its Agent complying with (i) Federal Energy Regulatory Commission ("FERC") regulations and policies, including without limitation, regulations and policies addressing "shipper must-have-title" and (ii) Gas Tariffs of the Pipeline(s) on which capacity is released.
  - (B) Qualified Seller and/or its Agent paying the Pipelines for the Released Capacity in accordance with the Pipelines' respective FERC Gas Tariffs.
  - (C) Qualified Seller and/or its Agent satisfying the credit requirements prescribed by the FERC Gas Tariffs of the Pipelines on which capacity is released and providing O&R, when requested, with appropriate documentation of continued compliance with those requirements. Qualified Seller and/or its Agent shall also notify O&R immediately of any change in its financial circumstances that results in non-compliance with the Pipelines' requirements.
3. **Term.** The Released Capacity shall be released, at the direction of the Qualified Seller, to either the Qualified Seller or its Agent, commencing at 10:00 A.M. Eastern Standard Time on November 1, 2010 and shall continue to be released until 10:00 A.M. Eastern Standard Time on November 1, 2011.

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4. Character of Release. Capacity releases shall be effectuated in accordance with FERC regulations and Gas Tariff(s) of the Pipelines on which capacity is released. O&R's release of capacity shall not constitute a guarantee of any particular level of service by the Pipelines on which capacity is released. O&R shall not be liable to Qualified Seller and/or its Agent in any way for interruptions of service by the Pipelines, but represents that the Released Capacity will be firm, primary delivery point capacity or will be part of a path of firm, primary delivery point capacity to O&R's Citygate.
5. Tariffs. All parties to this Agreement is subject to and shall be bound by the terms and conditions of O&R's Service Classification No. 11 of the Schedule for Gas Service-PSC No. 4 ("the Schedule"), O&R's Gas Transportation Operating Procedures ( the "GTOP") and the provisions of the Pipelines' FERC Gas Tariffs relating to capacity releases.
6. Receipt Points. Depending on the specific Pipelines on which capacity is released to Qualified Seller (see Section 1 above), the following points of receipt shall be available to Qualified Seller and/or its Agent under O&R's service agreements with the Pipelines: Columbia: Gulf-Rayne, LA, Leach, KY, Eagle, PA, Milford, PA, Broad Run, WV and Hi Hat Appalachian Pool; Tennessee: Zone 0 100 Leg and Zone 1 500/800 Leg; Texas Eastern: ELA, WLA, STX, ETX and M1; Algonquin: Hanover, NJ; and Tennessee: Niagara.
7. Delivery Points. Depending on the specific Pipelines on which capacity is released to Qualified Seller (see Section 1 above), the following points of delivery (and delivery point entitlements) shall be available to Qualified Seller and/or its Agent under O&R's service agreements with the Pipelines: O&R's Citygate- Scheduling Point #54 (Columbia), Scheduling Point #40 (Algonquin), Scheduling Point #020293 (Tennessee), and Scheduling Point #600323 (Millennium).
8. Payment of Pipeline Charges, Qualified Seller and/or its Agent's Reimbursement Obligation and O&R's Termination Right. Qualified Seller and/or its Agent shall pay the Pipelines directly for all charges associated with the use of the Released Capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, penalties, and other applicable charges. If Qualified Seller and/or its Agent fails to pay the Pipeline(s) for any charges resulting in O&R receiving less than the full credit from the Pipeline(s) to which they or it was otherwise entitled, Qualified Seller and/or its Agent shall, no later than five (5) business days after receipt of O&R's invoice, reimburse O&R for all such amounts, plus:
  - (a) interest on the unpaid pipeline charges at the rate prescribed for O&R in General Information Section 6(6)(1) of the Schedule, and
  - (b) an amount based upon the applicable tax surcharge factor specified on O&R's then-effective "Statement of Increase in Rates and Charges".

O&R may terminate this Agreement immediately (or at any time thereafter) upon receipt of notice that Qualified Seller and/or its Agent has failed to pay the Pipeline(s) for any of the Pipeline charges described above. Such termination shall not affect O&R's right to reimbursement from Qualified Seller and/or its Agent as described above.
9. Balancing. Qualified Seller and/or its Agent is responsible for:
  - (i) monitoring deliveries of gas to and receipts from the Pipelines; and
  - (ii) avoiding, eliminating, or paying for imbalances that arise on the Pipelines' systems because of Qualified Seller's and/or its Agent's use of the Released Capacity.
10. Indemnification and Warranty. Qualified Seller and/or its Agent shall indemnify, defend and hold harmless O&R from all losses, damages and penalties resulting from the failure by the Qualified Seller and/or its Agent to satisfy any of the conditions set forth in Section 2 hereof or to perform any obligation under this Capacity Release Service Agreement with O&R and under the Pipeline(s)' service agreement(s). Qualified Seller and its Agent also warrant that capacity released hereunder shall be used only to transport gas to which the holder of the capacity also has title.

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11. Recalls of Released Capacity. The Released Capacity, or any portion thereof, may be recalled by O&R for any of the following reasons:
- (i) to the extent that the amount of the total Maximum Aggregated Daily Contract Quantity (“MADCQ”), applicable to firm customers served by Qualified Seller behind O&R’s Citygate decreases (as determined in accordance with the Schedule); or
  - (ii) if Qualified Seller and/or its Agent fails to comply with the terms and conditions of the Schedule, O&R’s GTO or this Capacity Release Service Agreement; or
  - (iii) if Qualified Seller and/or its Agent fails to comply with the Pipelines’ capacity release provisions; or
  - (iv) when required to preserve the integrity of O&R’s facilities and service; or
  - (v) whenever Qualified Seller and/or its Agent fails to deliver gas to O&R equal to the aggregate MADCQs of Qualified Seller’s customers.
12. Notices. Any formal communications concerning this Agreement shall be in writing and delivered promptly either by hand, by first class mail, by Email or by facsimile to the appropriate address, as follows:

**To: O&R:**

Suzanne Sweeney  
Manager, Retail Access  
Orange & Rockland Utilities, Inc.  
390 W. Route 59  
Spring Valley, NY 10977  
Tel. No.: 845-577-3222 Fax No.: 845-577-3628  
Email: [sweeneys@ORU.com](mailto:sweeneys@ORU.com)

Michele Doyle  
Manager, Gas Transportation Services and Planning  
Consolidated Edison Company of New York, Inc.  
111 Broadway, Suite 1601  
New York, NY 10006  
Tel. No.: 212-227-1126 Fax: 212-528-0397  
Email: [doylem@coned.com](mailto:doylem@coned.com)

**To: Qualified Seller:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. No.: \_\_\_\_\_  
Fax No: \_\_\_\_\_ Email: \_\_\_\_\_

**To: Qualified Seller’s Agent:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. No.: \_\_\_\_\_  
Fax No. : \_\_\_\_\_ **Email:** \_\_\_\_\_

**IN WITNESS WHEREOF**, the above-identified parties have caused this Capacity Release Service Agreement to be signed by their respective duly authorized representatives as of the date and year first above written.

**ORANGE AND ROCKLAND UTILITIES, INC.**

**By:** \_\_\_\_\_

**Orange and Rockland Utilities, Inc.**

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Paul A. Olmsted, Director – Energy Management

**QUALIFIED SELLER NAME**

By: \_\_\_\_\_  
Name/Title

**QUALIFIED SELLER'S AGENT/DESIGNEE**

By: \_\_\_\_\_  
Name/Title