

**FORM OF SURETY BOND**

Surety Bond No. \_\_\_\_\_

THIS SURETY BOND is issued on **[October 6, 2011]** by **[full legal name of surety]** (“Surety”) on behalf of **[New Wave Energy Corp]** (“Principal”), and in favor of the New York Independent System Operator, Inc. (“NYISO”). Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to those terms in NYISO’s Open Access Transmission Tariff (“OATT”) or NYISO’s Market Administration and Control Area Services Tariff (“Services Tariff”), as context requires.

**WHEREAS**, Principal seeks to participate in the markets administered by NYISO and to schedule transmission service in the New York Control Area; and

~~1.~~ **WHEREAS**, Principal must satisfy the credit requirements established in the OATT and Services Tariff to participate in the markets administered by NYISO or to schedule transmission service in the New York Control Area; and

**WHEREAS**, Surety is U.S. Treasury-listed with a minimum “A” rating from A.M. Best and has agreed, in exchange for compensation provided by Principal, to provide this Surety Bond on behalf of Principal in accordance with NYISO’s credit requirements;

**NOW, THEREFORE**, Surety hereby agrees and covenants as follows:

~~2.~~ Amount of Bond. Surety unconditionally and irrevocably agrees to pay NYISO amounts not to exceed an aggregate of **[200,000.00]**, in accordance with the terms of this Surety Bond.

~~3.~~ Payment Upon Demand. Surety shall pay such amount as specified by NYISO upon receipt of a demand notice: (i) signed by an officer or authorized agent of NYISO, (ii) dated the date of presentation, and (iii) containing one of the following statements:

~~4.~~ “The undersigned hereby certifies to **[name of surety]** (“Surety”), with reference to its Surety Bond No. **[bond number]**, dated **[October 6, 2011]**, issued on behalf of **[New Wave Energy Corp]** (“Principal”) and in favor of the New York Independent System Operator, Inc., (“NYISO”) that Principal has failed to make payment in accordance with the terms of the OATT, Services Tariff, the Service Agreements thereto, or any other related agreement between NYISO and Principal. NYISO hereby demands payment in the amount of **[200,000.00]**.”

- or -

“The undersigned hereby certifies to **[name of surety]** (“Surety”), with reference to its Surety Bond No. **[bond number]**, dated **[October 6, 2011]**, issued on behalf of **[New Wave Energy Corp]** (“Principal”) and in favor of the New York Independent System Operator, Inc., (“NYISO”) that, as of the close of business on **[date less than thirty (30) days prior to the expiration of the bond]**, Principal

has failed to renew, replace, or amend this Surety Bond in satisfaction of the credit requirements established pursuant to the NYISO tariffs. NYISO hereby demands payment in the amount of [200,000.00].”

~~5.~~ Multiple Draws. NYISO may demand multiple payments pursuant to this Surety Bond; *provided, however,* that the total amount of Surety’s obligation hereunder shall not exceed an aggregate of [200,000.00].

~~6.~~ Time and Form of Payment. Surety shall pay amounts owed pursuant to this Surety Bond in full not later than the first business day following receipt of NYISO’s written demand for payment to the account designated therein.

~~7.~~ Obligations Unconditional. This Surety Bond is not conditioned upon NYISO first attempting to collect payment, resorting to any other means of security or collateral, or pursuing any other remedies it may have. The obligations of Surety hereunder are independent of the obligations of Principal, and NYISO may bring an action against Surety without bringing an action against Principal. NYISO may from time to time, without notice or demand, and without affecting Surety’s liability hereunder, take and hold other security for Principal’s obligations to NYISO and exchange, waive, release, or apply such security as NYISO deems appropriate in its sole discretion. Surety’s liability under this Surety Bond is not conditioned upon the validity or enforceability of Principal’s obligations to NYISO.

~~8.~~ Term of Surety Bond. The term of this Surety Bond shall begin on the date of its issuance, as set forth above, and shall continue in full force and effect until Principal ceases to be a NYISO customer and all amounts owed by Principal pursuant to the OATT, Services Tariff, the Service Agreements thereto, and any other related agreements are paid in full, including any amounts owed as a result of true-ups or other corrections to previous settlements; *provided, however,* that Surety may terminate this Surety Bond as provided in Paragraph 7, below.

~~9.~~ Termination. Surety may terminate this Surety Bond upon sixty (60) days written notice to NYISO; *provided, however,* that: (i) Surety’s liability hereunder shall survive such termination and remain in full force and effect as to obligations incurred by Principal during the term of this Surety Bond and (ii) in the event that Principal fails to provide an acceptable form of replacement security to NYISO at least thirty (30) days prior to the termination of this Surety Bond, Surety shall, upon demand, without any notice other than such demand, and without any further action by NYISO deliver cash collateral to NYISO not later than the next business day in the amount of the full remaining value of this Surety Bond as security for Principal’s obligations to NYISO. Cash collateral provided to NYISO by Surety and not applied by NYISO to satisfy unpaid obligations of Principal shall be returned to Surety at such time as: (i) Principal provides adequate replacement security to NYISO or (ii) Principal ceases to be a NYISO customer and all amounts owed by Principal to NYISO are paid in full, including amounts owed as a result of true-ups or other corrections to previous settlements.

~~10.~~ Principal Pays Bond Costs. Principal shall pay all commissions and charges for this Surety Bond. Principal's failure to pay any such charges shall not be grounds for termination of this Surety Bond, except as provided in Paragraph 7, above.

~~11.~~ Expenses. Surety shall pay all reasonable costs incurred by NYISO in the enforcement of this Surety Bond, including attorney fees and expenses. Surety's obligation to pay such costs shall be in addition to other amounts owed pursuant to this Surety Bond and shall not be limited by the maximum stated amount of this Surety Bond.

~~12.~~ Communications. Demands, notices, and other communications shall be deemed effective when received, shall be in writing, and shall be delivered by courier with receipt of delivery or by registered mail to the following addresses:

a. If to Surety:

**[Surety notice address]**

b. If to NYISO:

Attn: Credit Manager

New York Independent System Operator, Inc.

10 Krey Boulevard

Rensselaer, New York 12144-9681

c. If to Principal:

**Attn: Credit Dept**

**New Wave Energy Corp**

**PO Box 42**

**Bowmansville, NY 14026**

~~13.~~ Surety, NYISO, or Principal may change the address provided for receipt of communications pursuant to this Surety Bond by providing written notice to the other parties.

~~14.~~ Representations and Warranties. Surety represents and warrants to NYISO that:

a. Surety has the legal power to execute and deliver this Surety Bond and to perform in accordance with its terms. All necessary actions have been taken to authorize the execution and delivery of this Surety Bond and performance in accordance with its terms. This Surety Bond is a legal, valid, and binding obligation of Surety.

b. There is no action or proceeding pending or, to Surety's knowledge, threatened before any court, arbitrator, or governmental agency that may materially adversely affect Surety's ability to perform its obligations under this Surety Bond.

c. There is no fact that Surety has not disclosed in writing to NYISO of which Surety is aware or which Surety can reasonably foresee that would materially adversely affect Surety or the ability of Surety to perform its obligations hereunder.

~~15.~~ Assignment. NYISO may assign its rights under this Surety Bond without in any way diminishing Surety's obligations hereunder.

~~16.~~ Amendment and Waiver. The terms and provisions of this Surety Bond may not be amended or waived except in a writing signed by NYISO and Surety.

~~17.~~ Entire Agreement. This Surety Bond embodies the entire agreement between Surety and NYISO with respect to the matters set forth herein and supercedes all prior such agreements.

~~18.~~ Severability. Should any provision of this Surety Bond be determined by a court of competent jurisdiction to be unenforceable, all of the other provisions shall remain effective.

~~19.~~ Choice of Law; Jurisdiction; Venue; and Service of Process. This Surety Bond shall be governed by the laws of the State of New York without regard to conflict of laws principles. Surety irrevocably submits to the jurisdiction of any New York court or any United States court sitting in New York over any action or proceeding arising out of or relating to this Surety Bond and irrevocably agrees that all claims in such action or proceeding may be heard and determined by such court. Surety agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Surety waives any objection to venue on the basis of forum non conveniens. Surety irrevocably consents to the service of process in any action or proceeding by the mailing of copies of such process to Surety at its address set forth herein. Nothing herein shall affect the right of NYISO to bring any action or proceeding against Surety or its property in the courts of any other jurisdictions.

~~20.~~ Waiver of Jury Trial. SURETY IRREVOCABLY, VOLUNTARILY, AND WITH ADVICE OF COUNSEL WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS SURETY BOND.

IN WITNESS WHEREOF, Surety has executed and delivered this Surety Bond this ~~ff~~**October 6, 2011**].

**[full legal name of surety]**

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

Name:

Title: