

# **APPENDIX 'L'**

## **Embedded Generation Settlement Agreement**

**Ref. NHLCOS-210-00 - Connections**

**Ref: NHLCOS-210-07-Contracts**

**XXXXXXXXXXXXXXXXXX – NEWMARKET HYDRO LTD.**

**SETTLEMENT AGREEMENT**

THIS AGREEMENT made as of the ■ day of ■, 2001,

BETWEEN

**XXXXXXXXXXXXXXXXXX**, a corporation incorporated under the laws of the Province of Ontario

(hereinafter referred to as “**XXXXXX**”)

- and -

**NEWMARKET HYDRO LTD.**, a corporation incorporated under the laws of the Province of Ontario

(hereinafter referred to as the “**NHL**”)

**WHEREAS:**

1. XXXXX is connected to the distribution system of NHL and is not participating in the IMO Wholesale market.
2. The Retail Settlement Code (the “**Code**”), when proclaimed in force, will require NHL to pay XXXXX for all electricity supplied by XXXXX to NHL in a given settlement hour at the Hourly Ontario Energy Settlement Price (“**HOESP**”) as published by the IMO (or such other price as set out in the Code as it may be amended from time to time).
3. The parties agree that NHL will settle with and make all payments to XXXXX in respect of electricity supplied to NHL at the point of supply, as that term is defined in the Distribution System Code (the “**XXXXX Electricity**”).

**NOW THEREFORE**, for and in consideration of the premises and of the mutual covenants and agreements herein contained, XXXXX and NHL agree as follows:

## Settlement between XXXXX and NHL

- (a) NHL agrees to settle with and make all payments to XXXXX in respect of the XXXXX Electricity. NHL shall pay XXXXX for all such delivered electricity in a given settlement hour at HOESP or such other price as established in the Code or required by the Ontario Energy Board.
- (b) XXXXX acknowledges that NHL is not privy to the existence of nor the terms of any power purchase agreement (PPA) that XXXXX may enter into, and that NHL is required to accept and pay for all XXXXX Electricity, notwithstanding any terms to the contrary in the PPA. XXXXX is solely responsible for complying with and enforcing the terms of their PPA. Further, XXXXX is solely responsible for ensuring that any PPA's conform to market, regulatory and legislative requirements, and shall hold NHL harmless in any dispute with any authority which may arise from the existence of a PPA.
- (c) Settlement between XXXXX and NHL in respect of XXXXX Electricity delivered to NHL shall commence on the date in which Subsection 26(1) of the *Electricity Act, 1998* is proclaimed in force. Settlement shall terminate upon participation by XXXXX in the IMO Wholesale Market.

## Settlement Process

- (d) Payment shall be made monthly by NHL to XXXXX in respect of the XXXXX Electricity. NHL shall prepare the settlement statement for all payments required to be made by NHL for XXXXX Electricity and payments to be made by XXXXX for power delivered to XXXXX for internal load and non-competitive electricity charges as described in Paragraph 4, and applicable taxes. Amount due to either NHL or XXXXX shall be paid within 16 business days of the day of bill preparation, subject to interest on any amount remaining unpaid at the prevailing NHL late payment penalty amount.
- (e) NHL shall comply with the Distribution System Code in calculating the settlement costs for XXXXX Electricity. The metering data collected by NHL from the meter of XXXXX shall be used as the basis for preparation of monthly settlement statements. The metering data shall be subjected to NHL's validating, estimating and editing process (the "**VEE Process**") for settlement and billing purposes, as described in NHL's Conditions of Service. The editing, estimating and correcting of any metering data found to be erroneous or missing shall be performed in accordance with the VEE Process.
- (f) Any disputes between XXXXX and NHL concerning amounts payable by NHL or XXXXX for XXXXX Electricity, power delivered to XXXXX for internal load and non-competitive electricity charges shall be settled according to the dispute mechanism specified by NHL's Conditions of Service.
- (g) By notice to NHL, XXXXX may dispute all or part of the amount billed by NHL pursuant to the settlement statement, even if XXXXX or NHL accepts that

payment. Any deviations between the amount paid at the time due and the amount determined or settled shall be subject to payment of interest in accordance with the Code.

### **3. Access to Metering and Price Data**

**All access shall be as per the Code.**

### **4. Power Delivered to XXXXX for Internal Load and Non-Competitive Electricity Charges**

Subject to any written agreement to the contrary between NHL and XXXXX, the parties acknowledge that NHL is responsible for billing and settling with XXXXX for any electricity delivered to XXXXX to supply XXXXX's internal load requirements that cannot be supplied by XXXXX under the terms of the Ontario Energy Board Standard Supply Service Code (provided that XXXXX has not made alternative arrangements with a retailer). It is acknowledged that such settlement will include any distribution, uplift or other costs or charges related to the delivery of such power, and be consolidated on the settlement statement described in paragraph 2(a).

## **5 Notices**

(a) Any written correspondence between XXXXX and NHL in connection with matters herein shall be either faxed, mailed, or delivered as follows:

(i) if to XXXXX:

XXXXXXXXXXXXXXXXXXXX  
Newmarket, ON XXXXXXXX  
Attention:  
FAX:

(ii) if to NHL:

Newmarket Hydro Ltd.  
590 Steven Court  
Newmarket, ON  
L3Y 6Z2  
Attention: L. Macdonald, Manager, Technical Services  
FAX: 905 895 8931

(b) Any such written communication shall be deemed to have been given and received on the day on which it was delivered or transmitted if it is received prior to 4:00 p.m. (local time) on a business day and if not, on the next following business day or, if mailed, on the third business day following the date of mailing. If at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any written communication hereunder shall be delivered or transmitted by facsimile.

- (c) The designation or address of the person or persons to be so notified may be changed at any time by either party by written notice in accordance with paragraph 1(b) above.

**6. Entire Agreement**

This Agreement constitutes the entire agreement between the parties hereto. There are not and shall not be any verbal statements, representations, warranties, undertakings or agreements between the parties hereto and this Agreement may not be amended or modified in any respect except by written instrument signed by the parties hereto.

**7. Proper Law of Contract**

This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereto hereby irrevocably submits and attorns to the jurisdiction of the courts of the Province of Ontario.

**8. Benefit and Binding Nature of the Agreement**

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**9. Effective Date**

This Agreement shall take effect on the date as of which Section 26(1) of the Electricity Act is proclaimed in force in the Province of Ontario.

**IN WITNESS WHEREOF** this Agreement has been executed by the parties hereto.

**XXXXXXXXXXXXXXXXXXXX**

Per: \_\_\_\_\_ c/s



**NEWMARKET HYDRO LTD.**

Per: \_\_\_\_\_ c/s



## **SCHEDULE "A"**