

## ***PROPOSED TERM SHEET FINAL 12.04.13***

### **Maine Aqua Ventus I Proposed Term Sheet (Term Sheet)**

The following terms reflect the essential elements of a long-term contract for energy and capacity from the Maine Aqua Ventus I Project (the Project) that will be negotiated in good faith by Maine Aqua Ventus I GP LLC (MAV), the Maine Public Utilities Commission (Commission), and Central Maine Power Company, a Maine corporation and transmission and distribution utility (CMP) and is anticipated to be executed by MAV and CMP (hereinafter referred to as the Contract) pursuant to the Order of the Commission.

**Project Description:** The Project is as presented in the August 30, 2013 Proposal by MAV, as revised, comprised of two floating wind turbines with a total nameplate capacity of 12 MW, located in state waters in the Gulf of Maine at a location 2.5 miles off the southern coast of Monhegan Island and 12 miles off the coast of the mainland. The transmission interconnection to Maine is presently contemplated to occur in the Pemaquid Point region at the CMP substation in Bristol, Maine (Delivery Point). The Project includes associated assembly and manufacturing areas and any necessary transmission facilities, however owned or financed. The Contract will provide that all ocean energy test and pilot demonstration results will be provided to, and retained by, the University of Maine for the benefit of the State of Maine.

**Contract Term:** The Contract Term is twenty (20) years beginning on the Commercial Operations Date of the Project (COD) and ending twenty (20) years after the Contract Start Date (Contract End Date). For purposes of this provision, COD is the date designated in writing by MAV to CMP once all of the following have been completed: (a) Two (2) VolturnUS wind turbines have been installed at the Project location and have been commissioned, as evidenced by a commissioning certificate executed by the wind turbine manufacturer and delivered to CMP by MAV; (b) such wind turbine(s) have been synchronized with the utility grid and are capable of generating Energy and the Energy from the Project can be delivered to the Delivery Point; (c) MAV has obtained any and all permits, approvals and/or authorizations required from any governmental or other authority to develop, construct and operate the Project other than the Interconnection Required Permits (Seller Required Permits); (d) CMP and/or MAV have obtained any and all permits, approvals and/or authorizations required from any governmental or other authority to accept delivery of the Products, including without limitation all required construction and operating permits required to develop, construct, own and operate the Interconnection Facility (Interconnection Required Permits); and (e) all other requirements necessary under any agreement pertaining to transmission or interconnection, including the Project's ISO-NE interconnection agreement, have been met or are otherwise satisfied and the Project is authorized to generate and deliver the Energy to the Delivery Point, all as set forth in a certificate MAV shall submit to CMP certifying that the COD has been achieved.

All Contract Product amounts and prices are provided on a Contract Year basis. Contract Year means the 12-month period beginning on the Contract Start Date and each successive 12-month period commencing on the annual anniversary of the Contract Start Date (Contract Year). For example, if the Contract Start Date is October 1, 2017, Contract Year 1 is October 1, 2017 through September 30, 2018 and Contract Year 2 is October 1, 2018 through September 30, 2019.

**Contract Products:** The Contract Products to be purchased and sold under the

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Contract are the energy generated by the Project and delivered to the Delivery Point (Energy), the Project's electrical capacity (Capacity) (collectively, the Contract Products). The Energy purchased and sold under the Contract must be produced by the Project and delivered to the ISO-NE energy market during the Contract Term. MAV will use commercially reasonable efforts to qualify, clear and deliver Capacity from the Project in the ISO-NE Forward Capacity Market (FCM) (or successor market). Notwithstanding the inclusion of Capacity as a Contract Product, all rights and obligations related to the Project's Capacity will reside with MAV.

Renewable Energy Credits (RECs) or other market products associated with environmental attributes of the Project are not included in the Contract and the rights to such attributes are retained by MAV.

**Contract Quantity of Energy:** The amount of Energy purchased and sold under the Contract shall be the entire generation output delivered to the Delivery Point by the Project.

**Contract Price of Energy:** Contract Prices are specified by Contract Year and are stated in nominal dollar terms.

The Base Energy Contract Price shall apply to all Energy produced by the Project up to the Annual Energy Cap of 43,099 MWh.

The Base Energy Contract Price is \$230/MWh for Energy provided during Contract Year 1. The Base Energy Contract Price in each subsequent Contract Year will increase in an amount equal to 2.25% percent of the prior year's Base Energy Contract Price.

The amount of Energy sold at the Base Energy Contract Price may not exceed the 43,099 MWh Annual Energy Cap in each Contract Year. The price for Energy produced by the Project in excess of the Annual Energy Cap (Excess Energy Contract Price) shall be the applicable hourly Day-Ahead or Real-Time (at MAV's option) Locational Marginal Price in the ISO-NE wholesale energy market (or successor) applicable to the Project (LMP).

At the Conclusion of a Contract Year, if the Energy produced by the Project is below the Annual Energy Cap (an Annual Energy Shortfall), the number of megawatt-hours of the Annual Energy Shortfall may be carried forward for up to three successive Contract Years and added as a credit (Shortfall Credit) to the Annual Energy Cap for such three successive Contract Years until utilized. Any payment for Energy pursuant to such Shortfall Credit mechanism shall be at the Base Energy Contract Price in effect during the Contract Year when such Annual Energy Shortfall occurred. Seller shall be required to use any Short Fall Credit on a first in-first out basis.

**Available Ratepayer Funds Tracking Account:** CMP will maintain an internal tracking mechanism (ARF Tracking Account) to track the Energy sold to CMP at the Base Contract Energy Price, the Energy sold to CMP at the LMP, the value realized by CMP for the sale of the Energy into the wholesale market or pursuant to an entitlements contract and the Available Ratepayer Funds (ARF) available to CMP for each Contract Year and cumulatively for all Contract Years throughout the Contract Term. The ARF is the product of \$1.45/MWh times the sum of the retail sales to distribution voltage customers of CMP (Total Retail Sales) measured in megawatt-hours during a Contract

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Year.

Within thirty (30) days after the end of any Contract Year, CMP shall calculate the ARF related entries for that Contract Year and the cumulative balance in the ARF Tracking Account as of the end of the prior Contract Year. Generally, CMP shall record any amounts paid to MAV for Energy only (whether at the Base Contract Energy Price or at the LMP) during the Contract Year as a positive entry; any value received by CMP for its sale of the Energy into the wholesale market or through an entitlements contract as a negative entry; and the ARF amount as a negative entry. The calculations of Available Ratepayer Funds in any year and the cumulative balance in the ARF Tracking Account will be subject to an annual true-up adjustment to reflect actual contract payments made by CMP to MAV; actual value received by CMP for the sale of the Energy; and actual CMP Total Retail Sales during that year. CMP shall provide a report to MAV and the Commission within sixty (60) days after the end of any Contract Year detailing the ARF computations for that Contract Year and the cumulative balance in the ARF Tracking Account. Positive or negative balances as of the end of any Contract Year will be carried forward and included in the calculations for the next Contract Year.

If, at the end of the Contract Term, there remains a positive balance in the ARF Tracking Account, MAV shall pay that amount to CMP within thirty (30) days of receipt of CMP's invoice. If there remains a negative balance in the ARF Tracking Account at the end of the Contract Term, no payment shall be due either from MAV or CMP.

**Contract Quantity of Capacity:** The amount of Capacity subject to this Agreement shall be the amount of the Project's Capacity qualified, cleared and delivered in the ISO-NE Forward Capacity Market (or successor market).

**Contract Price of Capacity:** Capacity provided by the Project, if any, will be deemed to be sold to CMP for an amount equal to the value realized in the FCM (or successor market). All value realized in the FCM (or successor market) will flow to MAV, and will be netted against the amounts paid by CMP for Capacity such that the amounts paid for Capacity net to zero. The Contract Capacity Price shall be the value per kW-month for Capacity attributable to the Project through the Forward Capacity Market (or successor market) in the applicable month.

**Grants and Other Sources of Project Revenue:** MAV will use commercially reasonable efforts to pursue and acquire State, Federal, non-profit organization, for-profit organization, and other grant and subsidy opportunities applicable to the Project, including those that provide for the reduction of construction costs, capital or financing costs, and/or operating costs of the Project. The Project will retain any and all funds stemming from the Department of Energy Funding Opportunity Announcement Number DE-FOA-000041 0 in their entirety. For any additional state or federal grants or subsidies received by MAV, except for those explicitly identified and included in MAV's final financing plan, the Base Energy Contract Price will be reduced for the applicable Contract Year by 50 % of the net grant proceeds realized unless MAV proposes, and the Commission agrees to, an application of some or all of the 50% to support an increase in the Project scope or a subsequent project.

Notwithstanding the foregoing, in the event the current federal Investment Tax Credit has not been extended or reauthorized or a new federal tax incentive with value to the

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Project substantially equivalent to the existing Investment Tax Credit has not been authorized and/or is not in effect and available to cover the full expected construction period of the Project, and if not withstanding such event MAV proceeds to construct the Project, MAV shall be entitled to retain 100% of any additional grant proceeds to the extent necessary to offset the loss of the economic benefits to MAV associated with the Investment Tax Credit.

**Local Benefit Obligations.**

For the purposes of this Contract, “Maine-based Entities” refers to businesses or enterprises located and operating, or willing within a commercially reasonable time after contract execution to locate and operate, in Maine and that employ workers residing in Maine for a majority (greater than 50%) of the jobs relating to the Project.

MAV specifically commits to use commercially reasonable efforts to:

1. Capital Expenditure Benefits. Contract with Maine-based Entities for the design, development and manufacturing of components and materials comprising a majority (greater than 50%) of the total capital expenditures for the Project. At the present level of project design, this would represent contracts for approximately 59% of the total capital expenditures or 70% of the non-turbine capital expenditures being issued to Maine-based Entities.

2. Construction Period Benefits. Require that the majority (greater than 50%) of contract expenditures for the Project’s construction period activities be performed by Maine-based Entities. Create and/or retain jobs in Maine generating no less than \$10 million in annual labor income during the Project’s full construction period. For the purpose of this provision, Construction Period Benefits shall be provided for a period of not less than three years.

3. O&M Benefits. Contract with Maine-based Entities for all, or substantially all, operations and maintenance of the Project. For the purpose of this provision, substantially all means that not less than 50% of the project’s annual operations and maintenance expenditures will be with Maine-based Entities. MAV commits to use all reasonable commercial efforts to maximize the use of Maine-based Entities for Project O & M.

4. Monhegan Plantation Benefits. Provide electric energy to the Monhegan Island Plantation Power District (District) for the entire duration of the Contract Term without charge, in an annual amount not to exceed 340 megawatt hours escalating at one percent per year and a maximum demand of 300 KW (Electricity Provision Plan), or through consultation with the District provide benefits in an alternative form that are acceptable to MAV and approved by the Commission (Monhegan Alternative Benefit).

MAV will pay the commercially reasonable costs and installation of all interconnection to fulfill this commitment. As part of the design phase, Project engineers will work with District representatives to locate and design the interconnection consistent with the annual and maximum demands cited above.

In addition, MAV commits to paying for and installing a fiber optic cable to Monhegan Island in conjunction with the interconnection, to working with the District to arrive at a

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mutually agreeable entitlement structure for the cable, and to execute agreements with Monhegan Plantation addressing ownership, maintenance and capacity allocation issues.

MAV agrees to work with the District and the Commission to adopt a memorandum of understanding describing the structure of the Electricity Provision Plan and Monhegan Alternative Benefit in detail to be incorporated into the Contract.

5. Workforce Development Benefits. Develop and implement a program in collaboration with the University of Maine (UMaine) to attract K-12 students to science, engineering, and business programs. MAV will participate in a similar collaboration with the University of Maine System, Maine Maritime Academy and the Maine community college system to develop programs to educate and train undergraduate and graduate degree students in science, engineering, and business fields. Finally, MAV will develop and implement a workforce development program to assist in the creation of skilled workforce in Maine with the technical skills necessary to support offshore wind development and operation.

6. Local Content in Pre-FID (Financial Investment Decision) Phase. MAV and/or its partners have contracted with Maine-based Entities for its environmental and metocean studies and commit to maintaining the use of Maine-based Entities for such studies, including University of Maine researchers and students, environmental consultants, engineering firms and law firms. MAV and/or its partners are currently utilizing Maine-based Entities for front end engineering & design (FEED) studies currently underway and commit to using commercially reasonable efforts to maximize the use of Maine-based Entities during this phase of the Project.

7. Contractor Preference and Supply Chain Development. Institute a project-wide preference for Maine-based Entities, consistent with state and federal law, with the goal of maximizing local suppliers and contractors providing goods and services during construction and operation of the Project, including:

- Initiating an early market screening process to systematically identify and assess potential Maine suppliers and contractors.
- Holding dedicated supplier workshops targeting local suppliers for the Project.
- Performing studies with Maine suppliers to familiarize the suppliers with the Project, to understand the deliverables, to identify challenges and bottlenecks and to bring forward the suppliers' proposals for methodology improvements and process simplifications.
- Arranging and conducting tailored training events for parts of the supply chain, including vessels and harbors, manufacturing, construction infrastructure, logistics and transport, onshore electrical facilities, marine operations and installation.

8. Subcontractor Preference. Require its contractors to apply the same preference for Maine-based Entities for their subcontractors that MAV has committed to apply.

9. Reporting on Local Benefits. Submit to the Commission Annual Reports documenting its status with respect to the benefits outlined above. The first such Annual

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Report will be filed no later than one year after the long-term contract is executed.

10. University of Maine Collaboration. The VoltturnUS technology will be the exclusive technology used by MAV on the Project. MAV will continue to invest in commercially reasonable research and development at UMaine as a long term strategy to continually improve the design of the VoltturnUS technology going forward. MAV will execute a license for the VoltturnUS technology from UMaine no later than January 31, 2015.

A representative of Maine Prime Technologies, LLC, an affiliate of the University of Maine, will serve as a member of Maine Aqua Ventus I GP LLC. MAV agrees that in the event that Maine Prime Technologies, LLC is no longer affiliated with UMaine that another qualified legal entity affiliated with UMaine will be promptly accepted as a member of Maine Aqua Ventus I GP LLC.

UMaine will continue to lead the research and development efforts for the VoltturnUS technology, and also be responsible for carrying out data collection and analysis plans and environmental monitoring for the duration of the Project. Beginning in 2013, and conditioned on the results of the ongoing DOE down-select process, MAV commits that UMaine will be contracted to manage design efforts for the Project for an amount not less than \$5 MM, and contracted to undertake testing programs for the Project for an amount not less than \$2 MM (UMaine Program Management Contracts). The UMaine Program Management Contracts are in addition to test personnel costs which will be covered under the planned O & M budgets for the Project.

11. MAVII Gulf of Maine Wind Farm. MAV or its successor MAVII will adopt substantially the same preference for Maine-Based Entities (contractors, subcontractors, and suppliers) in the development of a large 100 to 500 MW wind farm, which MAV or its successor MAVII may place into service prior to the Contract End Date. If the MAVII Gulf of Maine Wind Farm is developed prior to the Contract End Date, MAV or its successor will utilize commercially reasonable efforts to:

- a. locate the farm in the Gulf of Maine;
- b. develop an Integrated Manufacturing and Assembly Facility within Maine;
- c. issue 50% of all contracts to Maine-based Entities;
- d. work with the State of Maine and other Maine-based Entities to attract a turbine manufacturer to Maine; and
- e. issue contracts for operations and maintenance which maximize the participation of Maine-based Entities.

12. Generator Status and Contract Structure. Obtain Qualifying Facility or Exempt Wholesale Generator status; as such terms are defined by the Federal Energy Regulatory Commission, throughout the term of the Contract. In addition, if necessary and desirable to MAV and the Commission, and without modifying the Contract Price of Energy, MAV commits to work with the Commission to create an alternative structure for the Contract, such as incorporating the transfer of ocean energy attributes or other such concept.

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13. Decommissioning. Comply with the directives of any applicable State or Federal agency to decommission the Project in a manner consistent with the Ocean Energy Act. The Contract will contain a separate decommissioning provision to serve as a backstop to any other State or Federal requirement.

14. Performance Assurance. MAV agrees that the final Contract will include adequate financial assurance provisions to ensure MAV's performance.

### **Compliance with Local Benefit Obligations.**

As outlined above, MAV will be required to submit Annual Reports documenting benefits to the State of Maine; these Annual Reports shall specifically address compliance with and/or progress toward the agreed upon Local Benefit Obligations above. The Annual Report for each Contract Year will be due no later than 90 days after the end of the Contract Year.

The Contract will contain a contract termination provision as set forth herein. At a time determined by MAV but before the commencement of construction of the Project, MAV shall submit a Local Benefit Report outlining the status of and likelihood of successful compliance with the Local Benefit Obligations. As evidence and support of MAV's statements on the status and likelihood of successful compliance of the Local Benefit Obligations, MAV shall include with the Local Benefit Report evidence of commitments that it will meet its Local Benefit Obligations, including but not limited to executed contracts, financial letters of commitment, and/or affidavits that demonstrate the likelihood of compliance. Upon MAV's filing of the Local Benefit Report, the Commission may initiate an expedited adjudicatory proceeding to evaluate the Local Benefit Report and to determine whether MAV has achieved, or is likely to achieve a significant portion of the Local Benefit Obligations commitments set forth above. In such a proceeding, which shall be concluded within ninety (90) days of submission of the Local Benefit Report, MAV shall have all of the due process rights accorded to parties under Chapter 110 of the Commission's Rules, including a right to hearing at which MAV would have the opportunity to present evidence. If, after notice and hearing, the Commission determines that MAV has not demonstrated that it is likely to achieve the Local Benefit Obligations set forth in the numbered items above, the Commission may either a) declare the Contract terminated, and MAV and CMP shall have no further obligations to one another under the Contract; or b) if requested by MAV, grant an extension of time for MAV to demonstrate that it has or is likely to achieve the Local Benefit Obligations. If the Commission grants such an extension of time, MAV shall submit a supplemental Local Benefit Report consistent with the requirements outlined above and the Commission shall determine whether, based on the supplemental Local Benefit Report and pursuant to an adjudicatory proceeding as outlined above, MAV has achieved, or is likely to achieve a significant portion of the Local Benefit Obligations commitments set forth above. If, after notice and hearing, the Commission determines that MAV has not demonstrated that it is likely to achieve the Local Benefit Obligations set forth in the numbered items above, the Commission may declare the Contract terminated, and MAV and CMP shall have no further obligations to one another under the Contract. If MAV disputes the Commission's findings or conclusions, MAV may appeal to the Maine Supreme Judicial Court. During the pendency of any such appeal, the Contract termination

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shall be stayed, but MAV will not initiate construction of the Project pending a final decision.

In addition, if at any time after the Local Benefit Report acceptance and prior to the COD the Commission Staff, believe that MAV has failed to comply with its Local Benefits Obligations; the Commission Staff may convene an informal conference of Parties to remedy the dispute. Notwithstanding the foregoing, in the event any of the following occur such a conference will be convened by the Commission:

1. Capital or O & M expenditures deviate by more than ten percent (10 %) below the agreed upon targets Local Benefit Obligations items 1-3 for any Contract Year as documented in the Annual Report delivered to the Commission for that Contract Year. Specifically, expenditures to Maine-based Entities fall below 40% of total non-turbine capital expenditures and/or operations period employment projections or actual hiring fall below 40 % of total operation and maintenance expenditures.

2. The commitment to Monhegan Plantation is deemed infeasible, unlawful or implementation is delayed by more than 12 calendar months beyond the COD.

3. Any change in the Project or other change occurs without the consent of the Maine Prime Technologies LLC or successor UMaine-affiliated representative, which results in a reduction to the UMaine Program Management Contracts of more than ten percent (10 %) below the \$7 million in total UMaine Program Management Contracts commitments made by MAV in Local Benefit Obligation item 10 above.

4. The workforce development goals outlined in the Workforce Development and Implementation Plan are not substantively achieved.

MAV shall participate in such an informal conference. If the dispute cannot be remedied by the informal conference process, the Commission may, at its option, open a proceeding to determine whether MAV has complied with the obligations set forth in this provision. MAV shall have all the due process rights accorded to parties under Chapter 110 of the Commission's Rules, including a right to hearing at which MAV would have the opportunity to present evidence to support the reasonableness of its efforts. If, after notice and an opportunity for hearing, the Commission determines that MAV has failed to comply with one or more of its Local Benefit Obligations, the Commission may assess a reasonable penalty, the amount of which is within the Commission's sole discretion, provided that penalties assessed by the Commission shall not exceed 7% of the revenue from Base Energy Contract Prices in any given year. In reaching a determination of the amount of the payment, the Commission shall consider the magnitude of the deficiency associated with MAV's failure to comply with its contractual obligation. The Commission may also notify MAV what actions may be taken by MAV within a specified timeframe to cure the deficiency and avoid the payment.

**Termination Right.**

In the event that any of the following events occur, MAV has the right to terminate the Contract by written notice to CMP without any liability or obligation on the part of either MAV or CMP,



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a) notwithstanding MAV's good faith efforts, MAV is unable to obtain all necessary State and Federal permits by January 1, 2016;

b) prior to January 1, 2016, the federal investment tax credit or any Department of Energy support which may have been awarded to MAV to develop the Project are materially adversely modified with respect to the Project or have not been extended to cover the full expected construction period of the Project; and

c) the boards of directors of the MAV partners decide by January 1, 2016 for any reason not to go forward with the project.

In addition and notwithstanding the foregoing, the Commission may unilaterally and without further notice, order CMP to terminate the Contract by written notice to MAV if the Commercial Operations Date is not achieved on or before the date that is five (5) years after the execution date of the Contract.

**Miscellaneous Contract Provisions.**

The Contract shall contain other provisions including but not limited to provisions relating to: force majeure; requirements for commercially reasonable cooperation between MAV and CMP to achieve Project interconnection and construction of transmission facilities; Contract renegotiation in order to maintain the commercial equities of the Contract subsequent to any contract term being invalidated for any reason, including change of law; a process for resolving conflicts between Commission and Department of Energy requirements; and for addressing the effect of any delays in federal funding; a process for Contract changes subsequent to additional State funds becoming available; and provisions related to other contract matters of either a technical or commercial basis that become relevant prior to the execution of the Contract.