

## **PAYMENT IN LIEU OF TAXES AGREEMENT**

This Payment in Lieu of Taxes Agreement (“PILOT”) is made as of the \_\_\_ day of [month], 2016, by and between the Town of Medway, a municipal corporation and body politic of the Commonwealth of Massachusetts (the “Town”), and Exelon West Medway II, LLC, a Delaware limited liability company (“Exelon”) having offices at 300 Exelon Way, Kennett Square, Pennsylvania 19348, each individually a “Party” and collectively, the “Parties.”

### **WITNESSETH:**

WHEREAS, an affiliate of Exelon owns 94± acres of real property located in the Town as depicted on Exhibit A attached hereto and incorporated herein by reference (the “Site”);

WHEREAS, an affiliate of Exelon owns existing real and personal property comprised of six pairs of Rolls Royce Avon combustion turbines and associated appurtenances with a total capacity of 173± megawatts (“MW”) of energy (the “Existing Facility”) on the Site;

WHEREAS, Exelon is developing two new dual fueled generating units capable of producing 200± MW of energy (the “New Facility”) on the Site;

WHEREAS, Exelon will be subject to certain local taxes in connection with its ownership of the real and personal property related to the New Facility;

WHEREAS, Exelon and the Town agree that having an accurate projection of their respective property tax expenses and revenues with respect to the New Facility is essential to the development of the New Facility, provides long-term revenue certainty for the Town and is in their mutual best interests;

WHEREAS, G.L. c. 59 §38H authorizes the Town to enter into an agreement for a negotiated payment in lieu of taxes imposed on real and personal property;

WHEREAS, Exelon and the Town acknowledge that a comprehensive agreement for payments in lieu of taxes under the authority of G.L. c. 59, §38H fixing and maintaining mutually acceptable payments based on reasonable and accurate fair cash values for all real and personal property associated with the New Facility for twenty (20) years commencing with commercial operations of the New Facility is appropriate and serves their respective interests; and

WHEREAS, Exelon and the Town have reached this PILOT as a result of good faith negotiations so that Exelon’s payments to the Town shall be the equivalent of the property tax obligations which would otherwise be owed to the Town by Exelon during the term of this PILOT based on full and fair cash valuation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties do hereby covenant and agree as follows:

1. Property to be Taxed. The real and personal property that comprises the New Facility to be owned by Exelon which shall be taxed subject to the terms of this PILOT is described in Exhibit A attached hereto and incorporated herein by reference as the New Facility. The New Facility also shall include any material additions, improvements, repairs, replacements, modifications or other changes to the New Facility certified pursuant to Section 5 which occur after the execution of this PILOT. This PILOT covers all real and personal property taxes otherwise due for the New Facility but does not affect any payments, other than real and personal property taxes, owed by Exelon to the Town, including, but not limited to, payments due under the Host Community Agreement between the Town and Exelon dated as of October \_\_, 2015 (the "HCA"), vehicle excise taxes, and amounts for customary services provided by the Town to Exelon and the New Facility such as water and sewer services.

The Existing Facility and the remainder of the Site will continue to be assessed and taxed pursuant to G.L. c. 59 and is not subject to this PILOT. Moreover, nothing contained in this PILOT, including, without limitation, any exhibits thereto, shall relieve Exelon, its agents or assigns, nor any other entity leasing or otherwise occupying existing Exelon properties in the Town from any payment obligations for any real or personal property related to the Existing Facility or on any property otherwise owned by Exelon, including, without limitation, all equipment and utilities appurtenant thereto and thereon. Items currently being assessed by the Town and/or the Commonwealth of Massachusetts and subject to real and/or personal property tax obligations shall continue to be subject to the same assessment and payment mechanisms in effect as of October 14, 2015 (as the same may be amended).

2. Term. This PILOT shall govern the taxation of the New Facility for twenty (20) years commencing in the year the New Facility commences commercial operations. During the construction period and prior to Commercial Operation Date, no payments will be required with respect to the work in progress. "Commercial Operation Date" or "COD" shall mean the date of initial commercial operation of the New Facility. Regular property tax payments will continue to be due on the Existing Facility.

For the purposes of this PILOT, each fiscal year shall begin on July 1 and shall end on June 30 of the following calendar year. By way of example, fiscal year 2016 means July 1, 2015 - June 30, 2016.

The initial payment hereunder shall be due in full within thirty (30) days of the sooner of the issuance of a Certificate of Occupancy for the New Facility by the Town's Building Commissioner or December 31, 2017. Thereafter, payments shall be made on a quarterly basis.

This PILOT may sooner terminate pursuant to Sections 7 and 13. Upon termination, the Town shall assess the New Facility in the normal course pursuant to G.L. c. 59.

After July 1 of the eighteenth (18<sup>th</sup>) year of this PILOT, but on or before June of the following year, the Town may notify Exelon if it desires to terminate this PILOT effective on June 30, 2038. In the event the Town exercises its rights under this Section, the Parties shall negotiate in good faith in an effort to agree upon a successor agreement to take effect at the conclusion of the twenty (20) year term. In the event the Parties are unable to reach agreement

on a successor agreement, the New Facility shall be taxed on an *ad valorem* basis pursuant to G.L. c. 59.

3. PILOT Payments. The Parties agree that the respective PILOT Payments (“PILOT Payments”) shall be the amounts listed below for each of the years included in the term of this PILOT in lieu of paying any other real or personal property taxes with respect to the New Facility.

PROPOSED

YEAR	QUARTER	NEW PLANT PILOT VALUE	PILOT PAYMENT ANNUAL TOTAL	QUARTERLY PILOT PAYMENT AMOUNTS	CPA PAYMENT AMOUNT (3% of PILOT Payment) (Due September 1 Annually)
1	1	\$210,000,000.00	\$3,830,400.00		\$114,912.00
2		\$208,950,000.00	\$3,811,248.00		\$114,337.44
	1			\$952,812.00	
	2			\$952,812.00	
	3			\$952,812.00	
	4			\$952,812.00	
3		\$207,905,250.00	\$3,792,191.76		\$113,765.75
	1			\$948,047.94	
	2			\$948,047.94	
	3			\$948,047.94	
	4			\$948,047.94	
4		\$206,865,723.75	\$3,773,230.80		\$113,196.92
	1			\$943,307.70	
	2			\$943,307.70	
	3			\$943,307.70	
	4			\$943,307.70	
5		\$205,831,395.13	\$3,754,364.65		\$112,630.94
	1			\$938,591.16	
	2			\$938,591.16	
	3			\$938,591.16	
	4			\$938,591.16	
6		\$204,802,238.16	\$3,735,592.82		\$112,067.78
	1			\$933,898.21	
	2			\$933,898.21	
	3			\$933,898.21	
	4			\$933,898.21	
7		\$203,778,226.96	\$3,716,914.86		\$111,507.45
	1			\$929,228.71	
	2			\$929,228.71	
	3			\$929,228.71	
	4			\$929,228.71	
8		\$202,759,335.83	\$3,698,330.29		\$110,949.91
	1			\$924,582.57	
	2			\$924,582.57	
	3			\$924,582.57	
	4			\$924,582.57	
9		\$201,745,539.15	\$3,679,838.63		\$110,395.16
	1			\$919,959.66	
	2			\$919,959.66	
	3			\$919,959.66	
	4			\$919,959.66	
10		\$200,736,811.46	\$3,661,439.44		\$109,843.18
	1			\$915,359.86	
	2			\$915,359.86	
	3			\$915,359.86	
	4			\$915,359.86	
11		\$199,733,127.40	\$3,643,132.24		\$109,293.97
	1			\$910,783.06	
	2			\$910,783.06	
	3			\$910,783.06	
	4			\$910,783.06	

12		\$198,734,461.76	\$3,624,916.58		\$108,747.50
	1			\$906,229.15	
	2			\$906,229.15	
	3			\$906,229.15	
	4			\$906,229.15	
13		\$197,740,789.45	\$3,606,792.00		\$108,203.76
	1			\$901,698.00	
	2			\$901,698.00	
	3			\$901,698.00	
	4			\$901,698.00	
14		\$196,752,085.50	\$3,588,758.04		\$107,662.74
	1			\$897,189.51	
	2			\$897,189.51	
	3			\$897,189.51	
	4			\$897,189.51	
15		\$195,768,325.08	\$3,570,814.25		\$107,124.43
	1			\$892,703.56	
	2			\$892,703.56	
	3			\$892,703.56	
	4			\$892,703.56	
16		\$194,789,483.45	\$3,552,960.18		\$106,588.81
	1			\$888,240.04	
	2			\$888,240.04	
	3			\$888,240.04	
	4			\$888,240.04	
17		\$193,815,536.03	\$3,535,195.38		\$106,055.86
	1			\$883,798.84	
	2			\$883,798.84	
	3			\$883,798.84	
	4			\$883,798.84	
18		\$192,846,458.35	\$3,517,519.40		\$105,525.58
	1			\$879,379.85	
	2			\$879,379.85	
	3			\$879,379.85	
	4			\$879,379.85	
19		\$191,882,226.06	\$3,499,931.80		\$104,997.95
	1			\$874,982.95	
	2			\$874,982.95	
	3			\$874,982.95	
	4			\$874,982.95	
20		\$190,922,814.93	\$3,482,432.14		\$104,472.96
	1			\$870,608.04	
	2			\$870,608.04	
	3			\$870,608.04	
	4			\$870,608.04	
			\$73,076,003.27		\$2,192,280.10
Sum of PILOT and CPA Payments					\$75,268,283.37

Such amounts shall be paid on a quarterly basis and shall be delivered to Town of Medway Collector of Taxes, 155 Village Street, Medway, MA 02053. Such amounts shall be paid each year in accordance with the following schedule: 1st quarter due August 1<sup>st</sup>; 2nd quarter due November 1<sup>st</sup>; 3rd quarter due February 1<sup>st</sup>; 4th quarter due May 1<sup>st</sup>. Should any due date fall on a weekend or holiday, payment shall be due the first business day following such date.

4. Community Preservation Act Payments. The Parties agree that in addition to the PILOT Payments provided for herein, the Town shall be entitled to receive an additional PILOT Payment of three percent (3%) of each PILOT Payment in order to compensate the Town for Community Preservation Act payments it is entitled to receive under the Town bylaws and Massachusetts law. Such payment shall be paid annually on or before September 1<sup>st</sup>.

5. Certifications. Exelon shall send a certification to the Town within ten (10) days of the Commercial Operation Date notifying the Town of such date. Thereafter, Exelon shall submit to the Town no later than the March 1<sup>st</sup> preceding the beginning of each fiscal year covered by this PILOT an annual certification which describes any material additions, improvements, repairs, replacements, modifications, retirements or other changes that have occurred since the final completion of the New Facility or since Exelon's last annual certification, as applicable, in accordance with G.L. c. 59, §29. In each annual certification, Exelon shall designate a representative who is available to answer any questions that the Town may have regarding the information that was provided in such annual certification.

6. Adjustments. If, during the term of this PILOT, (i) the New Facility is physically unable to operate for a period of eighteen (18) consecutive months following COD due to casualty or *Force Majeure* as defined below; (ii) there is any regulatory or legal proceeding or government investigation that results in an unfavorable judgment, order, decree, stipulation or injunction that prevents Exelon from constructing or operating the New Facility; or (iii) the New Facility is taken out of service permanently, Exelon may elect to terminate this PILOT.

In the event that the annual certification submitted in accordance with Section 5 of this PILOT indicates that there have been material capital improvements to the New Facility that materially increase its nameplate capacity above 200 MW, then, within thirty (30) days of receipt of each annual certification, the Town's Principal Assessor and Exelon shall agree upon a revised future payment schedule for the New Facility reflecting a *pro rata* increase in such payments. The revised PILOT Payment schedule shall take effect for the subsequent fiscal year. In the event that the parties are unable to agree upon a revised payment schedule within such thirty (30) day period, the Parties shall resolve the dispute in accordance with Section 22 below. In the event that the dispute resolution process set forth in Section 22 is initiated, the Town shall have a limited right to audit and inspect Exelon's records during the informal negotiation stage of the process, as and to the extent provided in G.L. c. 59. The scope of such audits shall be limited to reviewing information that is reasonably necessary to ascertain the accuracy of the information provided or omitted on Exelon's most recent annual certification. Such examinations shall be made upon not less than seven (7) days' prior notice during normal business hours at the New Facility and in such manner as to not unreasonably interfere with Exelon's normal business activities. If such records are not kept at the New Facility, Exelon shall deliver (at its sole expense) copies of such records to the office of the Town's Principal Assessor. Any information provided to the Town as part of an audit shall be treated as

confidential. In the event the Town requests documents or information that Exelon determines is proprietary, upon request by Exelon, the Parties will enter into a commercially reasonable confidentiality agreement in order to limit disclosure of such information.

In the event that the Town shall vote pursuant to G.L. c. 59, §21C *et seq.* to increase local property taxes for the purpose of a general override, a debt exclusion override or a capital exclusion override, the amounts due under this PILOT shall be adjusted upward proportionally to the same extent as the percentage to value increases born by taxpayers in the Town. This increase(s) shall continue for the duration of the term approved by the Town.

For the purpose of this PILOT, *Force Majeure* shall mean any cause not within the reasonable control of Exelon which precludes it from carrying out, in whole or in part, its obligations under this PILOT, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; extreme weather; 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; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse Exelon from performing due to any governmental act, failure to act, or order, where it was reasonably within Exelon's power to prevent such act, failure to act, or order. Notwithstanding anything in the PILOT to the contrary, *Force Majeure* shall not mean:

- (a) Customary inclement weather (in contrast to extreme weather) affecting construction, operation, or decommissioning of the New Facility.
- (b) Unavailability of equipment, repairs or parts for the New Facility, except to the extent due to a qualifying event of *Force Majeure* (whether such event affects Exelon directly or any supplier, manufacturer, shipper or warehouseman).
- (c) Any nonpayment under this PILOT.
- (d) Economic hardship of Exelon.

7. Failure to Make Timely Payments; Right to Cure. In accordance with G.L. c. 59, §57, the Town may assess penalties for late payments of PILOT Payments due under the provisions of this PILOT. The Town expressly reserves all rights available to it respecting the collection of such PILOT Payments. In the event a payment is not timely received by the Town, the Town shall issue a notice of default to Exelon and Exelon shall have thirty (30) days (the "Cure Period"; the Cure Period is not intended to modify the timing or amount of any penalties or interest that accrue under G.L. c. 59, §57, which shall be in addition to the penalty set forth below) from receipt of such notice within which to cure such default. If Exelon fails to timely cure the default, then within thirty (30) days after the end of the Cure Period, and at its sole option, the Town may declare this PILOT null and void, and the New Facility shall be taxed on an *ad valorem* basis pursuant to G.L. c. 59. In addition, in the event of payment default that is uncured at the end of the Cure Period and that is not the subject of a good faith dispute, Exelon shall pay a late fee of one thousand dollars (\$1,000) per day for each day that any payment under

this PILOT is due, provided, however, that no more than twenty-five thousand dollars (\$25,000) shall be due and owing for each instance of late payment or nonpayment. Interest shall also accrue on all late payments in accordance with G.L. c. 59, §57.

8. Mutual Benefits. The Parties acknowledge that this PILOT is the result of good faith negotiations between the Parties and extensive efforts to determine the fair cash value of the New Facility and is fair and beneficial to them because it resolves all issues regarding taxation of the New Facility, avoiding substantial litigation cost and uncertainty. The Town acknowledges that this PILOT is beneficial to it because it will result in steady, predictable, and reasonable PILOT Payments from the New Facility. Exelon acknowledges that this PILOT is beneficial to it because it provides predictability and certainty with respect to taxation of the New Facility.

9. HCA. The obligations under this PILOT are completely severable from the obligations of the Parties under the HCA. A default under this PILOT shall not be considered a default under the HCA. A default under the HCA shall not be considered a default under this PILOT.

10. No Precedent. This PILOT is entered into in good faith to resolve future disputes and to achieve predictability and economic stability for both Parties by establishing a schedule of PILOT Payments based on reasonable, accurate, and reliable fair cash values for the New Facility. Accordingly, Exelon and the Town agree that neither Party shall seek to use the PILOT Payments agreed to under this PILOT in any future proceedings regarding the value of the New Facility in the Town (except for disputes related to this PILOT) or in any other proceeding regarding the value of any other Exelon property, including the Existing Facility.

11. Advice of Counsel. The Parties have entered into this PILOT only after full and due consideration thereof and with the advice of their counsel and of their independent consultants.

12. Conditions Precedent. The obligations of the Parties under this PILOT are conditioned on (i) approval of this PILOT by the Town acting by Town Meeting; (ii) the Town promptly submitting this PILOT to the Massachusetts Department of Revenue (“DOR”) and DOR approving this PILOT in writing within thirty (30) days of receipt; and (iii) the achievement of the Commercial Operation Date. In the event that DOR objects to this PILOT, this PILOT shall become null and void and of no further effect unless otherwise agreed by the Parties in writing.

13. Change in Law.

(a) Exelon and the Town hereby stipulate and agree that no portion of this PILOT shall be enforceable, and the PILOT shall terminate if a court of competent jurisdiction or a Massachusetts State agency having applicable jurisdiction has determined or declared any material portion of this PILOT to be illegal, void, or unenforceable, such determination or declaration materially alters the economic benefits and burdens of the Parties, and such determination or declaration is not subject to further appeal by either Party.



(b) Exelon and the Town hereby stipulate and agree that no portion of this PILOT shall be enforceable, and the PILOT shall terminate if the Massachusetts General Court abolishes an *ad valorem* tax on property used for the production of electricity.

(c) In the event that the Massachusetts General Court enacts another means of taxation or assessment in addition to *ad valorem* taxation applicable to the New Facility during the term of the PILOT, the PILOT Payments due under the PILOT shall be reduced each year by the amount of such taxes or assessments actually paid by Exelon.

14. Renegotiation Obligations. Exelon and the Town agree that in the event this PILOT terminates pursuant to the provisions of Section 13 of this PILOT, and that such event does not occur through the direct fault of either Party, that the Parties will in good faith attempt to negotiate a new agreement which will seek to accomplish and implement the objectives and purposes of this PILOT for the same term as is addressed by this PILOT.

15. Exelon's Representations and Warranties. Exelon hereby makes the following representations and warranties to the Town:

(a) Exelon West Medway II, LLC, is a Delaware limited liability company, validly existing and in good standing under the laws of the state of Delaware and each has the full power and authority to carry on its business as it is now being conducted.

(b) This PILOT constitutes the legal, valid and binding obligation of Exelon enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles. Exelon has taken all necessary action to authorize and approve the execution and delivery of this PILOT.

(c) To the best of Exelon's knowledge, none of the documents or information furnished by or on behalf of Exelon to the Town in connection with negotiation and execution of this PILOT contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

(d) The person executing this PILOT on behalf of Exelon has the full power and authority to bind it to each and every provision of this PILOT.

16. Town's Representations and Warranties. The Town hereby makes the following representations and warranties to Exelon:

(a) The Town is a municipal corporation and body politic of the Commonwealth of Massachusetts.

(b) Subject to satisfaction of the conditions precedent in Section 12, this PILOT constitutes the legal, valid and binding obligation of the Town enforceable in accordance with its terms. The Town will take all necessary action to authorize and approve the execution and delivery of this PILOT.

(c) The person executing this PILOT on behalf of the Town has the full power and authority to bind it to each and every provision of this PILOT.

17. Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under the PILOT shall be in writing and addressed to the following:

If to the Town:

Michael E. Boynton  
Town Administrator  
Medway Town Hall  
155 Village Street  
Medway, MA 02053  
(508) 533-3200 (phone)  
[mboynton@townofmedway.org](mailto:mboynton@townofmedway.org)

with a copy to:

Barbara J. Saint Andre, Esq.  
Petrini & Associates, P.C.  
372 Union Avenue  
Framingham, MA 01702  
(508) 665-4310 (phone)  
BSaintandre@petrinilaw.com

If to Exelon:

Jack Hughes  
Exelon West Medway II, LLC  
9 Summer Street  
Medway, MA 02053  
jack.hughes@exeloncorp.com  
508-533-3919

with a copy to:

Todd D. Cutler, Esq.  
Associate General Counsel  
Exelon West Medway II, LLC  
300 Exelon Way, Suite 340  
Kennett Square, PA 19348  
[todd.cutler@exeloncorp.com](mailto:todd.cutler@exeloncorp.com)  
610.765.5602

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the PILOT; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the PILOT; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the PILOT. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving Party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Either Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

18. Entire and Complete Agreement; Binding Effect. This PILOT, along with the Exhibit(s) attached (or to be attached) hereto constitute the entire and complete agreement of the parties with respect to the subject matter hereof, exclusive of all prior understandings, arrangements and commitments, all of which, whether oral or written, having been merged herein, except for contemporaneous or subsequent written understandings, arrangements, or commitments signed by the parties intended to be bound thereby. This PILOT shall bind and inure to the benefit of the Parties to this PILOT and any successor or assignee acquiring an interest hereunder.

19. Survival. Termination of this PILOT for any reason shall not relieve Exelon of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations to make payments due on or before such termination as set forth in Sections 3 and 4.

20. Other Documents. Each Party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other Party in order to give full effect to this PILOT.

21. Governing Law. This PILOT 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 Commonwealth of Massachusetts without regard to principles of conflicts of law.

22. Dispute Resolution. Unless otherwise expressly provided for in this PILOT, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this PILOT between the Town and Exelon. The Town and Exelon agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this PILOT.

Any dispute that arises under or with respect to this PILOT that cannot be resolved in the daily management and implementation of this PILOT shall in the first instance be the subject of informal negotiations between representatives of Exelon and the Town Administrator of Medway, as the case may be, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the

dispute arises, unless it is modified by written agreement of the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph of this Section, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be Norfolk County Superior Court, Dedham, Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this PILOT. In any such judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

23. Confidentiality. The Parties understand that the Town is subject to, among other laws, the Massachusetts Public Records Act, G.L. c. 66, §10 and G.L. c. 4, §7, cl. 26, pursuant to which all documents and records made or received by the Town shall, absent an exemption or law to the contrary, constitute a public record subject to disclosure. To the extent not inconsistent with the Town's duty set forth in the preceding sentence, if either Party or its representatives provides to the other Party or its representatives confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the facility or of a Party's business ("Confidential Information"), the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any event not less than a commercially reasonable degree of care, and refrain from using such Confidential Information except in the negotiation and performance of this PILOT.

Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a governmental authority, under all applicable laws or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the

receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

24. Amendments. This PILOT may only be amended or modified by a written amendment to the PILOT signed by both Parties hereto.

25. Severability. If any section, phrase or portion of the PILOT is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the PILOT 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 the PILOT and the benefits to the Parties are not substantially impaired.

26. Headings and Captions. The headings and captions appearing in this PILOT are intended for reference only, and are not to be considered in construing the PILOT.

27. Counterparts; Scanned Copies. This PILOT may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this PILOT bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this PILOT notwithstanding the failure or inability to produce or tender an original, executed counterpart of this PILOT and without the requirement that the unavailability of such original, executed counterpart of this PILOT first be proven.

28. Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of the PILOT shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of the PILOT shall only be effective if made in writing and signed by the Party who is making such waiver.

29. Joint Workproduct. This PILOT shall be considered the workproduct of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

30. Successors and Assigns. This PILOT shall be binding upon Exelon, the Town and each of their affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by Exelon, the Town and each of their affiliates, parents, successors and permitted assigns.

31. No Joint Venture. Nothing herein contained shall be deemed to constitute either 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 the Parties are

individual and not collective in nature.

32. Further Assurances. From time to time and at any time at and after the execution of the PILOT, 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 PILOT that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the PILOT.

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

34. No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this PILOT shall be deemed to be an agreement by the Town to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Town or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with all applicable laws.

Executed under seal as of the date first above-written.

**TOWN OF MEDWAY**

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

**EXELON WEST MEDWAY II, LLC**

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

AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, Town Counsel

**EXHIBIT A**  
Description of New Facility

As used herein, the term “New Facility” shall include all of the following real and personal property:

The New Facility will be located on approximately thirteen (13) acres (“Facility Site”) within the Site consisting of Medway Assessors’ Map Parcel numbers 56-005, 66-010, 66-012 and 66-013. The Facility will include two (2) GE LMS100, simple-cycle peaking electric combustion turbines (100 megawatts each) with a combined net nominal electrical output of 200 megawatts (“MW”).

The New Facility will include the following major components and structures:

- Two (2) simple-cycle GE LMS100 combustion turbine generators (“CTGs”);
- Pollution control equipment including Selective Catalytic Reduction (“SCR”) and carbon monoxide (CO) oxidation catalysts in modules downstream of each CTG;
- Two (2) 160-foot tall stacks;
- Noise walls including a 55-foot high noise wall surrounding the entire power island including air cooled heat exchangers and a localized 20-foot property-line noise barrier;
- Natural gas compressors;
- Aboveground storage tanks for ULSD, service/fire water, demineralized water and aqueous ammonia, including unloading areas;
- Transformers and electrical interconnection facilities;
- Combined building for control room, administrative and facility services, maintenance and warehouse area, water treatment area, and associated systems;
- 450 kilowatt (“kW”) emergency diesel generator;
- 147 kW emergency diesel fire pump engine;
- Gas pipeline interconnection; and
- Stormwater management system.

Please see the attached General Arrangement Plan depicting components of the New Facility.

Natural Gas for the proposed New Facility will be delivered via an interconnection to the existing Algonquin Gas Transmission Company (“AGT”) pipeline located to the northwest of the Facility Site. The new pipeline will be permitted and constructed by Exelon. Additionally, the New Facility will connect to the existing Eversource 115 kV switchyard located on the Site.

