# DuPage Water Commission
## MEMORANDUM

TO: Chairman Vondra & Commissioners

FROM: Robert L. Martin, P.E.
General Manager

DATE: June 6, 2005

SUBJECT: Supplemental Information

1. Attached is the final Schedule A for Resolution No. R-36-05

2. I talked to Mayor Michael Fortner this afternoon. He said that the West Chicago City Attorney is drafting the detailed proposal requested by the Commission to support West Chicago becoming an "excluded" unit. Mayor Fortner did say it was his understanding that the Commission is escrowing sales tax funds for West Chicago. I informed him that the Commission is not escrowing any funds and contrary to press reports, has not taken any action regarding that matter.

3. I have hired R. Max Richter as the new Financial Administrator. Mr. Richter was the Director of Finance and Chief Financial Officer for the Southern Minnesota Municipal Power Agency, which is a wholesaler of electricity. Mr. Richter will be attending the Commission meeting tomorrow.

Administration/Memorandum/Supplemental Information 050606.doc

Constellation NewEnergy

# Schedule A

## Constellation NewEnergy, Inc. ("NewEnergy")
## Illinois Custom Block Schedule A
## Pricing Expiration Date: June 8, 2005
## Customer: DuPage Water Commission

This Custom Block Pricing Schedule A is entered into pursuant to and in accordance with a Master Electricity Supply Agreement executed on the 10th day of December, 2004, by and between NewEnergy and DuPage Water Commission, and is subject to all of the provisions, terms and conditons of such Master Electricity Supply Agreement. Notwithstanding anything to the contrary, any conflict between this Pricing Schedule and the Master Electricity Supply Agreement will be resolved in favor of this Pricing Schedule. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Electricity Supply Agreement.

**Product Type: Custom Block** The Block Energy Price(s) contained in the NewEnergy Electricity Charge are based on wholesale block energy prices for the contract term, captured on June 1, 2005, and are only good until the Expiration Date above Each Block Energy Purchase shall be for a specific number of kilowatt hours of power delivered at the appropriate wholesale zonal delivery point on a specific schedule for a specific period of time in a specific Zone (the "Terms"). All Block Energy Purchases shall be on a firm take-or-pay basis, meaning that Customer shall pay for all of the Block Energy Purchase electricity that is tendered by NewEnergy pursuant to the Terms, regardless of whether the electricity is accepted or used by Customer. The electricity needs of Customer's Account in excess of the Block Energy Purchase shall be served by Market Based Purchases (as described below). In the event that the electricity needs of Customer's Account are less than the Block Energy Purchase, NewEnergy shall, on behalf of Customer, make Market Based Sales of such excess Block Energy Purchase (as described below). Notwithstanding the foregoing, nothing in this Agreement shall relieve Customer from its obligation to pay for the entire Block Energy Purchase(s). **In the event that any of the Accounts are not served by interval meters, Customer will be ineligible for this Product from NewEnergy, and Customer agrees and acknowledges that NewEnergy will serve such Customer Account(s) under the terms of a Fixed Price Pricing Schedule. In such an event,** the Parties will execute a new Pricing Schedule to evidence such election by Customer for those Accounts.

**Price.** During the term of this Agreement, Customer covenants and agrees to pay the following (the "NewEnergy Electricity Charge"): (A) the **"Cost of Block Energy Purchases"**; plus (B) **"Cost of Market Based Purchases"**; less (C) **"Market Based Sales"**; plus (D) **"Capacity Charges"** all as reflected on its monthly invoices from NewEnergy and as defined below.

PS 1. **Certain Definitions.**

**"Administration Fee"** shall equal the amount specified herein in this Schedule A for each Account for charges including, billing, metering and securing interval data.

**"Billing Agent"** means NewEnergy as the authorized recipient of Customer's past and future billing information and energy usage data, including all notices relating to payment, rates, charges, fees, disconnection and continued service.

**"Balancing Operating Reserves Charge"** shall equal the product of (i) the hourly total of Market Based Purchases or Unused Energy; multiplied by the (ii) applicable daily Balancing Operating Reserves Rate.

**"Balancing Operating Reserves Rate"** is the daily Balancing Operating Reserves rate as published by PJM, expressed in dollars per kWh.

**"Block Energy Price"** means the fixed energy price measured in dollars per kWh ($/kWh) set forth in this Schedule A.

**"Block Energy Purchase(s)"** means the amount of Block Energy, expressed in kWh, which shall be equal to the product of the Block Size in kW, as designated in this Schedule A, multiplied by the number of applicable hours.

**"Capacity Price"** is the capacity price in dollars per kWh ($/kWh) for fulfilling the PJM capacity obligation for the Account as set forth in this Schedule A.

**"Delivery Point"** means existing and future points of interconnection between the ISO-controlled grid or a third-party transmission system and/or distribution system, as applicable, and the Utility's transmission system and/or distribution system.

**"Imbalance Charges"** shall include the Market Based Purchases and the Market Based Sales as both terms are defined herein.

**"ISO"** means PJM-West, L.L.C. ("PJM"), or other entity approved by the Federal Energy Regulatory Commission or other applicable regulatory body, that provides transmission service within Commonwealth Edison Company's ("ComEd") service territory.

**"Late Payment Charge"** means 1.5 % of the total undisputed dollar amount set forth on the invoice as due and payable from Customer.

**"Line Loss Charges"** reflect costs associated with line losses and are applicable to the Block Energy Purchases, Market Based Purchases and the Market Based Sales.

**"Market Based Purchases"** expressed in kWh means the sum of the following values each hour, if such amount is a positive number, computed as (i) the total actual energy consumed during a given hour, less (ii) the applicable Block Energy Purchase for that hour.

**"NewEnergy Electricity Charge"** shall mean the total of the following costs for the services provided by NewEnergy for the Account pursuant to this agreement: (A) the **"Cost of Block Energy Purchases"**; plus (B) **"Cost of Market Based Purchases"**; less (C) **"Market Based Sales"**; plus (D) **"Capacity Charges"**. The aforementioned costs shall be determined according to following calculations:

A. **Cost of Block Energy Purchases** for each billing period shall equal the product of the applicable (i) Block Energy Purchase and the resulting line losses; and (ii) Block Energy Price.

B. **Cost of Market Based Purchases** for each billing period shall equal the sum of each hour's (i) Market Based Purchases and resulting line losses; multiplied by (ii) the sum of (a) the applicable PJM Real-Time Hourly LMP; (b) plus applicable Balancing Operating Reserves Rate; plus (c) the Operation Cost as set out according to this Schedule A.



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C. **Market Based Sales** for each billing period shall equal the sum of each hour's (i) Unused Energy and resulting line losses; multiplied by (ii) the sum of (a) the applicable PJM Real-Time Hourly LMP; (b) less applicable Balancing Operating Reserves Rate; less (c) the Operation Cost as set out according to this Schedule A.

D. **Capacity Charges** for each billing period shall equal Capacity Price multiplied by the aggregate energy consumed for the billing period.

The foregoing charges set forth in (A) through (D) are referred to herein as the **"NewEnergy Electricity Charge"**. The NewEnergy Electricity Charge does ***not*** include or cover any Utility Charges related to transmission, distribution and other services, which such charges shall be the sole responsibility of Customer. Furthermore, NewEnergy shall have no obligation to enroll or supply electricity to any account(s) not identified in this Pricing Schedule.

**"Operation Cost"** is a fixed charge expressed in Dollars per kWh ($/kWh) that includes, NewEnergy's operating and administrative costs for the services provided hereunder.

**"Payment Date"** means that date that is nineteen (19) days after the date on the invoice.

**"PJM Real-Time LMP Index"** means the PJM Real-Time LMP applicable for retail load settlements (currently the ComEd Zone) as published by PJM, expressed in dollars per kWh.

**"Power Purchase Option"** means the total amount as would be due for the Account (including all credits, adjustments or reductions) based upon the Utility's Rider PPO – Power Purchase Option (MI) for Customer's consumption and usage patterns for the Account.

**"Rate Retail Customer Delivery Service" ("RCDS")** means Retail Customer Delivery Service-Nonresidential, as described under the applicable Utility or the ComEd tariff that provides the terms, conditions, and charges under which ComEd delivers electricity to nonresidential retail customers on an unbundled basis.

**"Switch Date"** means the first date of delivery of electricity to the Account and is subject to Utility's acceptance and enrollment of Account

**"Unused Energy"** expressed in kWh means the sum of the following values each hour, if such amount is a positive number, computed as (i) the applicable Block Energy Purchases for a given hour, less (ii) the total actual energy consumed for that hour.

**"Utility Charges"** means (i) all delivery services or Commonwealth Edison Company costs, charges, and fees, due under Rate RCDS or otherwise, including without limitation Rate CTC - Customer Transition Charges or Rate CTC -MY, (ii) other applicable Commonwealth Edison Company tariff charges associated with Customer's use of Utility's distribution network, which charges may include meter rental and installation charges, distribution facilities charges, customer charge, facilities, franchise fees, lighting charges, public programs, Rider 28 charges, and decommissioning charges; (iii) applicable transmission service charges imposed by the ISO that may include a PJM Administrative charge, and charges associated with congestion or capacity; and (iv) EDC and ISO imposed penalties and fees. NewEnergy, upon reasonable request, will provide Customer with documentation (subject to any confidentiality constraints) to support the calculation of these charges.

PS 2.1 **Initial Term**. With respect to each Account set forth below, the term of this Pricing Schedule shall commence on the "Start Date(s)" and end on the "End Date(s)", both as specified below, unless extended upon the mutual written agreement of the Parties or as otherwise provided in this Pricing Schedule. NewEnergy will use commercially reasonable efforts to begin service to the Accounts on the Start Date(s) set forth below, but if NewEnergy is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond NewEnergy's control (including Customer's failure to notify the Utility that it has selected NewEnergy as its supplier or any acts or omissions of the Utility), the Start Date will commence on the next regularly scheduled Utility meter read date in the month and year following successful enrollment of such Account(s).

PS 2.2 **Renewal Terms**. **Nothing in the Agreement (including this Pricing Schedule) shall be deemed to require or otherwise obligate NewEnergy to offer to extend the term of this Pricing Schedule (and thus send a Renewal Notice to Customer). Furthermore, where NewEnergy has sent a Renewal Notice to Customer, NewEnergy shall have the right to withdraw such Renewal Notice without penalty or prejudice at any time prior to the Expiration Date, and following such withdrawal shall have no obligation to continue to provide service to the Account past the Expiration Date.**

PS2.3 **Invoicing and Payment**. Customer shall be billed for amounts due under this Pricing Schedule and the Agreement as follows: Customer will receive a single invoice from NewEnergy that includes (A) the Block Energy Charges, (B) Utility Charges; (C) Imbalance Charges, (D) Line Loss Charges; (E) Transmission Service Charge; (F) PJM Administration Charge; (G) a Capacity Charge; and (H) the Administration Fee. NewEnergy will pay any Utility Charges (including any late charges or penalties arising from NewEnergy's service for which NewEnergy shall indemnify and hold Customer harmless) during the term of this Agreement on behalf of Customer. Late payment charges may be included on a subsequent invoice and are payable on demand; provided, however, Customer may elect not more than five (5) times during the term of this Agreement for such late charge not to apply until twenty one (21) days following the date of invoice in the event payment is delayed as a consequence of an inability of Customer to obtain the necessary signature(s) for any required payment. In addition, interest will accrue daily on the amounts due to NewEnergy at a rate of 1.5% per month or he highest rate permitted by Law, whichever is less; provided, however, Customer may elect not more than five (5) times during the term of this Agreement for such late charges and interest payments not to apply until twenty one (21) days following the date of invoice in the event payment is delayed as a consequence of an inability of Customer to obtain the necessary signature(s) for any required payment. NewEnergy reserves the right to adjust its billing cycle from time to time. Customer acknowledges that NewEnergy's ability to invoice Customer is dependent on the Utility's or ISO's ability to furnish NewEnergy with all necessary information. In the absence of such information, NewEnergy shall have the right to invoice Customer based on estimated meter readings or other estimated information. Customer's invoice will be adjusted the next billing cycle after which NewEnergy receives the actual consumption amount and other necessary information from the Utility or ISO, to reconcile any difference between estimated consumption and actual consumption or other matters. Furthermore, to the extent that dollar amounts included on an invoice are for the benefit of the Utility, Customer shall also comply with the standard terms and conditions of the Utility applicable to payments owed to it. Payments to NewEnergy are subject to adjustments in subsequent invoices if, on the basis of verified information provided by the ISO, the Utility or otherwise, the amount of electricity delivered to the Customer is adjusted. Both Parties shall work together to investigate and resolve any dispute, and upon resolution, any amount determined to be due or credited shall be paid promptly with interest calculated according to this section. Customer shall have full responsibility for payment of any existing amounts owed to Utility. In the event that the Customer is deemed by the Utility to be ineligible to receive a single bill from NewEnergy, Customer agrees and acknowledges that NewEnergy will serve Customer's Account(s) under he terms of this Pricing Schedule, but NewEnergy will invoice Customer for NewEnergy Electricity Charges only, and Customer will be invoiced directly by the Utility for all other Utility, delivery, and other related charges.

PS2.4 **Usage Variance**. Customer acknowledges that the wholesale Block Energy Price, Block Energy Purchase and Capacity Price are based upon Customer's historical usage pattern(s) for the Account identified on this Schedule A, and Customer's eligibility for Utility's Rate RCDS as of the Switch Date. Customer agrees to notify NewEnergy in advance of any material variance in consumption, and Customer agrees to bear any actual and incremental charges resulting from any variance in consumption of more than zero percent (0%), as compared to the Block Sizes. NewEnergy, upon reasonable request, will provide Customer with documentation (subject to any confidentiality constraints) to support the calculation of charges and costs under this Section PS2.4. In order to comply with Utility's good faith scheduling requirements, NewEnergy will rely upon Customer's historical usage pattern or customer provided usage forecast during the Term of the Agreement. Customer further agrees in good faith to notify NewEnergy of any anticipated material variances in its historic or customer provided forecasted usage pattern.

Notwithstanding the foregoing, if Customer fails to comply with this provision and/or using energy as scheduled during the Term, the Customer may be subject to curtailments or interruption by EDC or ISO and be subject to penalties as outlined herein. **If one or more of Customer's facilities which are receiving electricity supply hereunder are closed, vacated, sold, consolidated or otherwise disposed of, then Customer may, terminate this Pricing Schedule upon 30 days written notice to NewEnergy, in which event Customer may be liable to make an early termination payment to NewEnergy under Section T2.3 of the Master Electricity Supply Agreement. Customer shall use reasonable efforts to provide NewEnergy prompt prior written notice (but in no event less than 30 days) by facsimile or electronic mail before any significant change in the anticipated usage of electricity for any facility receiving service under this Pricing Schedule, including without limitation, changes due to permanent and expected equipment outages, plant or facility shutdowns, or changes in the operating hours of a facility.**

PS2.5 **Switching Onto and Off of Utility Supply Service.** To the extent permitted by Law, NewEnergy reserves the right, in its sole discretion and in accordance with applicable Law, to arrange for the supply of electricity to be provided to the Account and to move the Account onto and off of (i) the Utility's Power Purchase Option; (ii) the Utility's bundled tariff service then in effect; or (iii) alternate electricity supply sources to the extent such election does not bind the Customer to such rate, charge or service beyond the term of this Pricing Schedule. During the Term of this Pricing Schedule, Customer transfers, conveys and assigns to NewEnergy all right, title and interest in and to Customer's interest under Utility's Power Purchase Option for the Account, including without limitation all charges and credits relating thereto. Customer agrees to execute in a timely manner any authorizations necessary to effectuate this process. Notwithstanding any move to the Utility's Power Purchase Option; the Utility bundled tariff service then in effect; or any other electric supply service; the amount Customer shall be obligated to pay for such electric energy shall not exceed the NewEnergy Electricity Charge, and to the extent necessary NewEnergy shall credit against amounts Customer owes to NewEnergy, or if no such amounts are due to NewEnergy pay to Customer, on a monthly basis, an amount equal to the difference between the amount charged Customer by the Utility for such electricity (the "**Utility Delivery Charge**") and the otherwise applicable NewEnergy Electricity Charge, so long as the Utility Delivery Charge is greater than the NewEnergy Electricity Charge.

PS2.6 **NewEnergy and Utility Contact Information.** Customer may contact NewEnergy regarding its invoice or other matters concerning this Agreement at NewEnergy's Customer Service Department by toll-free telephone at (888) 638-4606. ***CUSTOMER AGREES TO CONTACT ITS UTILITY IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBER:*** **(800) 334-7661.**

PS2.7 **Resource Adequacy and Renewable Portfolio Standard Program Implementation.** NewEnergy Electricity Charges do not reflect the cost of any regulatory or legal requirements which impose an alternative resource adequacy construct or renewable portfolio standards on NewEnergy. Any such standards imposed by Law or regulatory order or otherwise that results in increased costs to NewEnergy shall be considered to be a Change in Law under the Master Electricity Supply Agreement. NewEnergy shall have the right to adjust upwards the amount payable by Customer under this Pricing Schedule to take into account any increased costs associated with such Change in Law. Such additional charges will be included in subsequent invoices to Customer.

PS 2.8 **Alternate Pricing Options.** At any time during the term of this Pricing Schedule, Customer may request other NewEnergy fixed and/or block standard pricing options then being generally offered. If the Parties agree on alternate pricing and terms, then Customer may convert from the variable pricing provided in this Pricing Schedule to the selected fixed or block pricing option without penalty. The Parties will execute a new Pricing Schedule to evidence Customer's election.


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## Constellation NewEnergy, Inc. ("NewEnergy")
## Custom Block Electricity Service Agreement Schedule A

| Account Number | Meter Number | Service Address | Cycle | Start Date | End Date |
|---|---|---|---|---|---|
| 0297187001 | 097113479 | 6161 Butterfield Rd., Elmhurst, IL | 17 | 6/23/2005 | 12/22/2005 |

| | |
|---|---|
| **Operation Cost:** | **$ 0.00100 per kWh** |
| **Administration Fee:** | **$ 69 per billing cycle** |
| **Block Size:**<br>**For Each On-Peak Hour**<br>**For Each Off-Peak Hour** | **4100 kW (6/23/05 – 9/22/05)**<br>**3,500 kW (9/23/05 – 12/22/05)**<br>**0 kW** |
| **Block Energy Price:**<br>**On-Peak Hours**<br>**Off-Peak Hours** | <br>**$ 0.06496 per kWh**<br>**$ N/A per kWh** |
| **Capacity Price:** | **$ 0.00251 per kWh** |

**"On-Peak Hours"** refers to the hours of 9:00 a.m. CPT to 10:00 p.m. CPT on Monday through Friday, except on days on which the Utility holidays are generally observed.
**"Off-Peak Hours"** refers to specifically those hours that are not defined herein as On-Peak hours above.

Any alteration, addition, or modification of the preprinted terms upon this Illinois Custom Block Schedule A shall be void and without any effect.

NewEnergy will provide a NewEnergy Contract Number upon receipt of the following by 2:00 p.m. CPT on the Pricing Expiration Date via facsimile to (312) 704-8530 (Attention: Contracts Administrator): (1) a fully completed and executed Master Agreement containing the NewEnergy Reference Number; (2) Customer's signature on this Illinois Custom Block Pricing Schedule A; and (3) a fully executed Designation of General Account Agent (GAA) form.

**In witness whereof**, the Parties have caused this Pricing Schedule to be executed on their behalf on the respective dates written below. **This Pricing Schedule shall not be binding or enforceable against NewEnergy unless and until signed by an authorized representative of NewEnergy.**

**CONSTELLATION NEWENERGY, INC.**

By:_____

Name:_____

Title:_____
Date:_____

Address for Notices:
550 W. Washington Blvd., Suite 300
Chicago, Illinois 60661
Attention: Contracts Administrator
Facsimile: (312) 704-8530
Telephone: (312) 704-9200

Address for Receipt of Invoices:

_____

_____

**CUSTOMER: DuPage Water Commission**

By:_____

Name:_____

Title:_____
Date:_____

Address for Notices:

_____

NewEnergy Reference Number: IL-CE-CP CB-S
NewEnergy Contract Number: 50524085002460308 and 50606081516533674