

DOCKETED

Docket Number:	15-AFC-01
Project Title:	Puente Power Project
TN #:	221669
Document Title:	Form of Cooperation Agreement Exhibit F
Description:	N/A
Filer:	PATRICIA LARKIN
Organization:	SHUTE, MIHALY & WEINBERGER LLP
Submitter Role:	Intervenor Representative
Submission Date:	11/2/2017 2:20:05 PM
Docketed Date:	11/2/2017

EXHIBIT F

Form of Cooperation Agreement

Certain documents, or portions thereof, contained in this **Exhibit F** and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, subject to the applicable consent rights under the Plan and the Restructuring Support Agreement, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

This **Exhibit F** is subject to ongoing review, revision, and further negotiation by the parties to the Restructuring Support Agreement including the Debtors, Consenting Noteholders and NRG, who have various consent rights over the final form of this **Exhibit F** and this **Exhibit F** may be amended, modified, supplemented, and revised in accordance with those ongoing negotiations.

Cooperation Agreement

This Cooperation Agreement (this “Agreement”) dated as of [_____, 2017] (the “Effective Date”), is by and between GenOn Energy, Inc. (“GenOn”) and NRG Energy, Inc. (“NRG”); and

WHEREAS, NRG and GenOn are parties to the Restructuring Support Agreement dated June 12, 2017 (the “Restructuring Support Agreement”), which provides that GenOn and NRG will cooperate to maximize the value of certain development projects and assets implicated by such development projects.

NOW THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto (together, the “Parties” and each a “Party”) hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Affiliates” means, with respect to any Person, (a) each Person that such Person Controls, (b) each Person that Controls such Person, and (c) each Person that is under common Control with such Person; provided, that GenOn and NRG shall not be deemed Affiliates for purposes of this Agreement.

“Agreement” has the meaning set forth in the preamble.

“Avon Lake Pipeline” means [that certain pipeline owned by NRG that is connected to the Avon Lake facility located near Avon Lake, Ohio.]

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas or such other court having jurisdiction over the Chapter 11 Cases.

“Business Day” means any day other than a Saturday, Sunday or a statutory holiday on which federal banks in the State of New York are closed.

“Canal 3” means the advanced development stage project that will consist of an approximately 333MW electricity generating facility located in Sandwich, MA.

“Canal 3 Agreements” means collectively: the (1) Option and Lease Agreement, dated March 31, 2016, by and between NRG Canal LLC and NRG Canal 3 Development LLC; (2) Operation and Maintenance Agreement, dated December 16, 2016, by and between NRG Canal LLC and NRG Canal 3 Development LLC; (3) Shared Facilities Agreement, dated December 16, 2016, by and between NRG Canal LLC and NRG Canal 3 Development[; and (4) that certain Solar Site Lease Agreement, dated May 4, 2016, by and between NRG Canal LLC and NRG Renew Canal I LLC, as amended, modified and supplemented from time to time].

“Canal 3 Option” has the meaning set forth in Section 2.1(a).

“Canal 3 Option Period” has the meaning set forth in Section 2.1(a).

“Canal 3 Option Price” has the meaning set forth in Section 2.1(a).

“Chapter 11 Cases” means the procedurally consolidated and jointly administered Chapter 11 cases pending in the Bankruptcy Court in respect of GenOn and certain of its direct and indirect subsidiaries, styled as *In re GenOn Energy, Inc.* et al. Case No. 17-33695.

“Confidential Information” has the meaning set forth in Section 4.1(b).

“Confirmation Date” has the meaning set forth in the Plan.

“Control” means the possession, directly or indirectly, through one or more intermediaries, of either of the following:

(a)(i) in the case of a corporation, more than 50% of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); (iii) in the case of a trust or estate, including a business trust, more than 50% of the beneficial interest therein; and (iv) in the case of any other entity, more than 50% of the economic or beneficial interest therein; or

(b) in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to exercise a controlling influence over the management of the entity.

“Deer Park” means [•].

“Deer Park O&M Agreement” means that certain Operation and Maintenance Agreement dated July 15, 2011 by and between GenOn Energy Services, LLC and Shell Oil Company, as amended from time to time thereafter.

“Disclosing Party” has the meaning set forth in Section 4.1(b).

“Effective Date” has the meaning set forth in the preamble.

“Emergence” means the date on which the effective date of the Plan occurs in accordance with its terms.

“Existing Radial Lines Agreement” has the meaning set forth in Section 2.1(b).

“GenOn” has the meaning set forth in the preamble.

“Governmental Authority” means a federal, state or local governmental authority; a county or parish; a city, town, township, village or other municipality; a district, ward or other subdivision of any of the foregoing; any executive, legislative or other governing body of any of the foregoing; any agency, regulatory authority, board, department, system, service office, commission, committee, council or other administrative body of any of the foregoing; any independent system operator, regional transmission organization, the North American Electric Reliability Corporation or any other reliability council or authority; any court or other judicial body; and any officer, official or other representative of any of the foregoing.

“Governmental Order” has the meaning set forth in Section 4.1(d).

“Law” means any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration or interpretive or advisory opinion or letter of a Governmental Authority having valid jurisdiction.

“NRG” has the meaning set forth in the preamble.

“Option Closing” has the meaning set forth in Section 2.2.

“Option Notice” has the meaning set forth in Section 2.2.

“Party” has the meaning set forth in the recitals.

“Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association, corporation, custodian, nominee or other individual or entity in its own or any representative capacity or any Governmental Authority.

“Plan” means the *Second Amended Joint Chapter 11 Plan of Reorganization of GenOn Energy, Inc. and its Debtor Affiliates* filed in the Chapter 11 Cases as docket number 832, as may be modified or amended in accordance with its terms.

“Plan Effective Date” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Plan’s Effective Date set forth in Article X.A of the Plan have been satisfied or waived in accordance with Article X.C of the Plan.

“Receiving Party” has the meaning set forth in Section 4.1(b).

“Reorganized GenOn” has the meaning set forth in the Plan.

“Restructuring Support Agreement” has the meaning set forth in the recitals.

“Seward” means [•]

Section 1.2 General Interpretive Principles.

(a) The words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole.

(b) Words in the singular shall include the plural and vice versa, and words of one gender shall include the other genders, in each case, as the context requires.

(c) The word “including” and words of similar import shall mean “including, without limitation,” unless otherwise specified. The word “or” is not exclusive.

(d) References to “days” shall mean calendar days.

(e) All references to “\$” or “dollars” mean the lawful currency of the United States of America.

ARTICLE II

COOPERATION AND DEVELOPMENT

Section 2.1 Cooperation and Development. Subject to the terms and conditions set forth herein:

(a) Subject to the occurrence of the Plan Effective Date, GenOn shall assume the Canal 3 Agreements, and in exchange NRG hereby grants GenOn an option (the “Canal 3 Option”) which shall expire at 11:59 PM EPT on March 31, 2018 (the “Canal 3 Option Period”), to acquire NRG’s interest in and to Canal 3, including the Canal 3 Agreements, for the sum of (i) \$40,000,000, (ii) all future investments

actually made by NRG solely with respect to Canal 3 after the Effective Date through the exercise date of the Canal 3 Option (in the case of (i) and (ii), to be calculated consistent with the development schedule previously provided to GenOn and inclusive of the development fee as specified therein through the exercise date of the Canal 3 Option), and (iii) a 12% return on investment; *provided*, that the basis upon which the 12% return on investment is calculated shall exclude all development fees (the “Canal 3 Option Price”), with such option to be exercised in accordance with and pursuant to Section 2.2. During the Canal 3 Option Period, NRG will continue to invest in and develop Canal 3 using its commercially reasonable and good faith efforts. All budgets for future investments in Canal 3 shall be mutually agreed between GenOn and NRG.

(b) On or before December 31, 2017, GenOn will terminate the [Amended and Restated Coolwater Generating Station Radial Lines Agreement by and between Southern California Edison Company (“SCE”) and NRG California South LP effective as of April 7, 1998] (as amended from time to time thereafter, the “Existing Radial Lines Agreement”) (including, but not limited to, the \$530,000 annual payment by GenOn to NRG with respect thereto) and will grant an easement [in the form attached hereto as Exhibit A](as negotiated and mutually agreed upon in good faith by GenOn and NRG)] to a [9-acre parcel of land] solely to the extent necessary to facilitate a generation tie in to the SCE transmission system by NRG’s adjacent development project. For the avoidance of doubt, upon the termination of the Existing Radial Lines Agreement, NRG will be solely responsible for and bear any and all costs set forth in Section 9 of the Existing Radial Lines Agreement, including any letter of credit posting, and any refund payable to the plant owner pursuant to Section 9 of the Existing Radial Lines Agreement shall be paid to NRG.

(c) The Avon Lake Pipeline shall be preserved for the benefit of Avon Lake and on a cost-neutral basis to NRG. Upon GenOn’s request, NRG and GenOn shall use commercially reasonable efforts to transfer NRG’s rights and interests in the Avon Lake Pipeline railcars to GenOn.¹

(d) On or before December 1, 2017, GenOn (i) will use its commercially reasonable efforts to transfer its employees whose responsibilities are exclusively or primarily related to the Seward and Deer Park Generating Stations to NRG and (ii) shall assign the Deer Park O&M Agreement to NRG.

(e) NRG and GenOn shall negotiate in good faith the continued shared use of the licenses and permits set forth on Exhibit C attached hereto and any additional permits and licenses reasonably requested by GenOn that are necessary for the operation of the business of GenOn as soon as practicable after Emergence. If mutual agreement cannot be reached with respect to any such license or permit, NRG will use commercially reasonable efforts to assist GenOn in obtaining any such licenses or permits, including, upon the reasonable request of GenOn, initiating contacts with any third-party vendor or other supplier with whom NRG has a pre-existing relationship, providing all contact and relationship information regarding all such third-party vendors, and making joint calls, arranging and conducting joint meetings or other contacts with such third-party vendors, in each case at GenOn’s sole expense.²

(f) NRG and GenOn shall discuss in good faith continued provision of certain tax compliance and accounting services solely to the extent necessary to complete applicable tax work for pre-closing and straddle tax periods and otherwise facilitate the provision of such tax compliance and accounting services to Reorganized GenOn (and/or a third-party provider of Reorganized GenOn’s choosing).

Section 2.2 Option Exercise. GenOn may exercise the Canal 3 Option by delivering written notice (an “Option Notice”) to NRG at any time during the applicable Canal 3 Option Period. Until the expiration

¹ Note to Draft: The sizing and economics of the railcars in this section remain subject to ongoing due diligence and negotiation. NRG recognizes that GenOn anticipates an at-the-money transfer, appropriately sized for Avon Lake’s long-term needs.

² Note to Draft: This is different from the TSA. The licenses/permits referred to herein are with respect to continued shared use. The TSA only addresses licenses to be transferred.

of the Canal 3 Option Period, NRG shall be restricted from transferring, selling, assigning or otherwise disposing of its interests in and to Canal 3 other than to GenOn or any of GenOn's Affiliates without GenOn's prior written consent. Following delivery of an Option Notice, GenOn shall pay the applicable Canal 3 Option Price no later than [60] days following the date such Option Notice is delivered and delivery of the purchased interests shall be consummated substantially contemporaneously therewith (each, an "Option Closing"). If, for any reason, GenOn does not pay the applicable Canal 3 Option Price within such [60] day period, the Canal 3 Option will be deemed to have been forfeited. In connection with any Option Closing, GenOn will receive customary representations and warranties from NRG and any applicable permitted transferee regarding the sale of NRG's interests in and to Canal 3 and Avon Lake, as applicable, including representations that NRG or any applicable permitted transferee has good and marketable title to the interests to be transferred, free and clear of all liens, claims and other encumbrances on the date of closing the transfer. NRG hereby consents to the taking of any steps by GenOn (or its designees exercising the Canal 3 Option) which GenOn deems are reasonably necessary to effect any legal formalities in relation to such transfer, subject to NRG's right to consent to any filing of record in the applicable real property records.

Section 2.3 Disclaimer of Development Rights. NRG hereby irrevocably disclaims and relinquishes any and all other development rights, title and interest in relation to GenOn property sites and assets related thereto, other than those sites specified and dealt with by this Agreement. NRG represents that there are no development-related agreements between GenOn and NRG or any of their respective Affiliates other than those set forth in Exhibit B attached hereto.

ARTICLE III

EFFECTIVENESS

Section 3.1 Effectiveness. This Agreement shall become effective upon the Effective Date.

Section 3.2 Termination; Extension. Subject to NRG or GenOn's respective continuing obligation to make payments then owing under this Agreement, the Parties may terminate this Agreement by mutual written Agreement.

Section 3.3 Rights upon Termination. In the event of termination of this Agreement for any reason whatsoever, subject to this Article III, all obligations of either Party shall terminate. Upon such termination, NRG shall provide to GenOn all Confidential Information of GenOn in NRG's possession or control in a medium and format reasonably requested by GenOn, and upon request by GenOn destroy or deliver up all copies of Confidential Information of GenOn in NRG's possession or control except to the extent required by Law or regulation to keep such information or as necessary for NRG to comply with the terms of this Agreement.

ARTICLE IV

GENERAL PROVISIONS

Section 4.1 Confidentiality.

(a) Each of NRG and GenOn agree that any information exchanged between the Parties or their respective Affiliates that is marked as confidential or proprietary or should reasonably be understood to be confidential or proprietary under the circumstances shall be treated as Confidential Information. Each of NRG and GenOn hereby agrees not to disclose or use at any time, either during the term of this Agreement or thereafter, any Confidential Information (as defined below) of the other Party, whether or not such information is developed by such Party, except to the extent that such disclosure or use is directly related to and required by (i) the performance of the Services pursuant to the terms of this Agreement or (ii)

enforcement of such Party's rights under this Agreement. Each Party and its Affiliates shall take all commercially reasonable steps to safeguard the other Party's Confidential Information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) As used in this Agreement, the term "Confidential Information" means, with respect to GenOn, on the one hand, or NRG, on the other hand (such Party disclosing Confidential Information, the "Disclosing Party" and such Party receiving Confidential Information, the "Receiving Party"), information and data that is not generally known to the public concerning, arising from, owned by, or related to such Disclosing Party and its Affiliates or any of their respective assets (including, for the avoidance of doubt, all intellectual property and books and records of such Disclosing Party or any of its Affiliates); provided, that Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by the Receiving Party or any of the Receiving Party's Affiliates, (ii) is or becomes available to the Receiving Party on a non-confidential basis prior to disclosure to such Receiving Party by the Disclosing Party or its Affiliates or their respective representatives from a source that is not bound by a confidentiality agreement or similar undertaking with the Disclosing Party or its Affiliates or their respective representatives, or (iii) was independently developed by the Receiving Party without use of, or reference to, any information or data that is not generally known to the public concerning, arising from, owned by, or related to the Disclosing Party or its Affiliates or any of their respective assets.

(c) All Confidential Information of a Disclosing Party belongs to such Disclosing Party. Any permitted use or disclosure of any Confidential Information by the Receiving Party shall not be deemed to represent an assignment or grant of any right, title or interest in such Confidential Information.

(d) The foregoing shall not be violated by statements in response to legal process, required governmental testimony or filings, or administrative investigations or arbitral proceedings (including, without limitation, depositions in connection with such investigations or proceedings) ("Governmental Order") or to comply with NRG's customary document retention policies; provided that NRG maintains the confidentiality of the Confidential Information in accordance with this Agreement. If a Receiving Party or any of its Affiliates is required by Governmental Order to disclose Confidential Information, such Receiving Party or such Affiliate may disclose such Confidential Information only to the extent required to be disclosed and shall, if not prohibited by Law, promptly notify the Disclosing Party and take reasonable steps at the Disclosing Party's expense to assist the Disclosing Party in contesting such Governmental Order or in protecting the Confidential Information.

(e) Notwithstanding anything else in this Agreement, Receiving Party may disclose the Confidential Information of the Disclosing Party to Receiving Party's Affiliates and its and their respective directors, officers, employees, managers, attorneys, accountants, consultants, professional advisors, auditors, agents and representatives as reasonably required to perform the Services or fulfill its obligations under this Agreement, and any such disclosure shall not be a violation of such Party's obligations under this Section 4.1.

Section 4.2 Notices. All notices and communications required or permitted to be given hereunder shall be in writing and shall be delivered personally, or sent by bonded overnight courier, or mailed by U.S. Express Mail or by certified or registered United States Mail with all postage fully prepaid, or sent by electronic mail (with a hard copy to follow), addressed to the applicable Party, as appropriate, at the address for such Person shown below or at such other address as such Party shall have theretofore designated by written notice delivered to the other Parties:

If to GenOn, addressed to:

GenOn Energy, Inc.

Attn: [●]

Address: [●]

Email: [●]

and with a copy to (which shall not constitute notice):

Attn: [●]

Address: [●]

Email: [●]

If to NRG, addressed to:

NRG Energy, Inc.

Attn: David Hill

Address: 804 Carnegie Center

Princeton, NJ 08540

Email: OGC@NRG.com

and with a copy to (which shall not constitute notice):

Baker Botts L.L.P.

Attn: Elaine M. Walsh

Address: 1299 Pennsylvania Ave., NW

Washington, D.C. 20004

Email: elaine.walsh@bakerbotts.com

Any notice given in accordance herewith shall be deemed to have been given only when delivered to the addressee in person or by courier, or transmitted by electronic mail during normal business hours on a Business Day (or if delivered or transmitted after normal business hours on a Business Day or on a day other than a Business Day, then on the next Business Day), or upon actual receipt by the addressee during normal business hours on a Business Day after such notice has either been delivered to an overnight courier or deposited in the United States Mail, as the case may be (or if delivered after normal business hours on a Business Day or on a day other than a Business Day, then on the next Business Day). Any Party may change the contact information to which such communications are to be addressed by giving written notice to the other Party.

Section 4.3 Successors, Assigns and Transferees.

(a) The rights and obligations of any Party under this Agreement may be transferred only with the the written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, and provided, that (i) either Party may transfer its rights and obligations hereunder, in whole or in part, to any Affiliate of such Party without the prior written consent of the other Party, and (ii) provided further, that such assignment shall not relieve such Party of any of its obligations hereunder to the extent any such Affiliate does not satisfy its obligations hereunder. Any transfer in violation of this Section 4.3 shall be null and void.

(b) This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns, and there shall be no third-party beneficiaries.

Section 4.4 Jurisdiction; Governing Law; Waiver of Jury Trial.

(a) This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted in accordance with, the Laws of the State of New York, without regard to otherwise governing principles of conflicts of law that would result in the application of the law of any other jurisdiction. In addition to any remedies at Law, or expressly set forth herein, each Party acknowledges that the other Party shall be permitted, without the posting of a bond or other security, to pursue equitable remedies in respect of any breach of the terms of this Agreement, including, without limitation, the right to enforce such terms specifically notwithstanding the availability of adequate money damages.

(b) In any judicial proceeding involving any dispute, controversy or claim arising out of or relating to this Agreement, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the state and federal courts located in the State of New York for any actions, suits or proceedings arising out of or relating to or concerning this Agreement.

(c) EACH OF THE PARTIES HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

Section 4.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the transactions contemplated hereby are not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 4.6 Entire Agreement; Amendment. This Agreement, as it may be amended from time to time by the Parties, sets forth the entire understanding and agreement of the Parties, and this Agreement shall supersede any other agreement and understandings (written or oral) between the Parties with respect to the transactions described in this Agreement.

Section 4.7 Bankruptcy. All licenses granted under this Agreement shall be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, 11 U.S.C. § 365(n), licenses to “intellectual property” as defined under Section 101 of the U.S. Bankruptcy Code, 11 U.S.C. § 101. The Parties agree that GenOn, NRG and their respective Affiliates shall retain and may fully exercise all of their rights and elections under Section 365(n) of the U.S. Bankruptcy Code.

Section 4.8 Counterparts. A Party may deliver executed signature pages to this Agreement by facsimile or other electronic transmission to the other Party, which electronic copy shall be deemed to be an original executed signature page. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

Section 4.9 Further Assurances and Cooperation. Each Party hereby further covenants and agrees to negotiate any documentation related to the transactions contemplated by this Agreement in good faith and, in any event, in all respects consistent with this Agreement and the Restructuring Support Agreement. Each Party agrees to cooperate in good faith with each other to facilitate the performance by the Parties of their obligations hereunder and the purposes of this Agreement. Each Party shall take all reasonable and appropriate action and shall execute all documents, instruments or agreements of any kind that may be

reasonably necessary or appropriate to carry out any of the provisions hereof and to otherwise effectuate the transactions contemplated by this Agreement and the Restructuring Support Agreement.

Section 4.10 Specific Performance. It is understood and agreed by each of the Parties that money damages may not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy of any such breach. This provision is without prejudice to any other rights or remedies, whether at law or in equity, that any Party may have against any other Party for any failure to perform its obligations under this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its officers thereunto duly authorized, all as of the day and year first above written:

GENON ENERGY, INC.

By: _____

Name: _____

Title: _____

NRG ENERGY, INC.

By: _____

Name: _____

Title: _____

EXHIBIT A

Form of Easement

[To come.]

EXHIBIT B

Intercompany Development-Related Agreements

[To come.]

EXHIBIT C

Shared Licenses and Permits

[To come.]