

NHPUC 31OCT17PM12:20

October 30, 2017

**VIA- E-FILING AND FEDEX**

Debra A. Howland  
Executive Director and Secretary  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301-2429

**Re: North American Power and Gas, LLC-Application Information for Competitive Electric Power Supplier Registration-CEPS License No.: DM 17-125**

Dear Ms. Howland:

This correspondence is being filed by North American Power and Gas, LLC ("NAPG") pursuant to Staff's directive to file updated disclosure documents to conform to the modified New Hampshire PUC 2000 rules. Please find enclosed NAPG's updated residential and small commercial Terms of Service.

If you have any questions or require any additional information, please contact me at [Kjospeh@napower.com](mailto:Kjospeh@napower.com) or 203-663-9757.

Best Regards,



Keenia Joseph  
Director, Regulatory Affairs

Cc: David Goyette  
Jan Quint

**THIS AGREEMENT CONTAINS AN ARBITRATION CLAUSE AND A CLASS ACTION WAIVER THAT WILL AFFECT CUSTOMER'S LEGAL RIGHTS. PLEASE REVIEW CAREFULLY.**

**New Hampshire Service Area Terms of Service**

The following is your Terms of Service Agreement with **North American Power and Gas, LLC** ("NAP" and/or "North American Power"). This Agreement, any Disclosure Label and Contract Summary Disclosure Statement, together, your Welcome Package (collectively, the "Agreement") (i) describes your and NAP's responsibilities and, among other things, contains an arbitration clause and class action waiver that waives each of your and NAP's rights to sue in court (other than individual action in small claims court), to trial by jury, and to participate in a class action; and (ii) comprises your entire agreement with North American Power, and supersedes any oral or written statements made in connection with this Agreement or your electricity supply. This Agreement authorizes North American Power to change your electric supplier with your Local Utility (each "Local Utility" being Eversource Energy, National Grid or Unitil) and, by executing, approving and/or not rescinding this Agreement, you agree to be bound without limitation, qualification or change and to abide by the terms of this Agreement. In this Agreement, the words "we," "us," and "our" refer to North American Power, and the words "you" and "your" refer to Customer. You represent that you are at least 18 years old and fully authorized to enter into this Agreement.

**1. Service.** You will begin receiving electricity at the time of the first scheduled meter reading by your Local Utility, unless your Local Utility establishes a different effective date ("Start Date"). NAP shall supply your electricity pursuant to this Agreement during the term of this Agreement. By executing, approving and/or not rescinding this Agreement under NAP's terms, you agree to initiate service and begin enrollment.

**2. Term; Renewal.** If your electricity supply service is provided at a Fixed Price, the price of electricity under this Agreement shall be fixed for the Fixed Price Period stated on the Contract Summary Disclosure Statement included with this Agreement. The Fixed Price Period shall commence on the Start Date. At the expiration of the Fixed Price Period, this Agreement will automatically continue on a month-to-month basis on the same terms except that the price each month will be NAP's then-current Variable Rate. NAP will provide you with a renewal notification at least 45 days and no more than 60 days prior to the expiration of any Fixed Price Period ("Renewal Notice"). In the Renewal Notice, NAP will remind you of the existing Fixed Price Period expiration date and will provide information regarding your options to renew or continue on another NAP product. Unless you select another NAP product, terminate or transfers service within 20 days of such notice, your electricity supply with NAP will continue as described herein. .If

NAP materially changes its terms and conditions other than variable pricing, NAP will notify you of any such change and its effective date. You will have 3 business days from receipt of the first billing statement following such effective date to reject the new terms and conditions and cancel this Agreement (this period is extended to 5 business days following postmarked date when delivered by U.S. Mail).

If your electricity supply service is provided at a Variable Rate, your energy will be supplied on a month-to-month basis at the then-current Variable Rate, and either party will have the right to cancel at any, subject to any applicable early termination fee.

**3. Price.** If your electricity supply service is provided at a Fixed Price, NAP's price for all electricity sold under this Agreement shall be fixed for the Fixed Price Period as described above in Section 2. This Fixed Price applies to all electricity supplied by NAP during the Fixed Price Period and does not vary based on usage amount. This Fixed Price excludes all other costs, including, but not limited to, charges related to delivery of electricity, the price of transmission and distribution, the system benefits fund, stranded cost recovery charge, any utility-related charges and taxes, which will be billed by Customer's Local Utility. Upon completion of the Fixed Price Period, unless otherwise agreed, the price charged for electricity under this Agreement will be a month-to-month Variable Rate. The Variable Rate will be determined by NAP for each month at its sole discretion based on business and market conditions including, but not limited to, the costs incurred by NAP to procure energy to serve your account, transportation costs, balancing fees, capacity charges, line losses, ancillary service fees, alternative and renewable energy requirements, storage charges, administrative costs, costs to acquire, marketing costs, profit, applicable taxes, and other business and market considerations. The customer may not know the monthly Variable Rate until the monthly bills are issued by the Local Utility. There is no cap or limit on your Variable Rate from one billing cycle to the next.

**4. Rescission** You have the right to rescind this Agreement without fees or penalties of any kind in accordance with each of the options outlined below, (each, as applicable, the "Rescission Period"). You should contact NAP at its contact information listed in Section 14 of the Agreement to exercise this right of rescission:

- i. within 5 business days from the date of electronic delivery of this Agreement and Welcome Letter,
- ii. within 6 business days from the postmarked date when this Agreement and Welcome Letter is delivered via the U.S. mail
- iii. within 10 business days from the date of electronic delivery if the customer was enrolled through an in-person solicitation at Customer's residence; or

iv. within 11 business days from the postmarked date when this Agreement is delivered via the U.S. Mail if the customer was enrolled through an in-person solicitation at Customer's residence.

**5. Agency.** You hereby appoint NAP as agent for the purposes of acquiring the supplies necessary to meet your electricity needs and arranging to deliver electricity to you.

**6. Title.** All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery," which shall be at the New England power grid (ISO New England North American Power load bus), and shall constitute the point at which the sale occurs and title passes from NAP to you.

**7. Measurement.** The measurement in kilowatt hours of the quantity of electricity delivered under this Agreement shall be determined by the meter readings performed by the Local Utility.

**8. Billing and Payment.** Approximately each month your bill for electricity supplied by NAP, not including the Local Utility's charges for transmitting and delivering the electricity over the Local Utility system, will be calculated by multiplying (i) the price of electricity by (ii) the amount of electricity used in the billing cycle, based on the meter readings performed by the Local Utility, which shall be solely responsible for the accuracy of such meter readings. For each account, you will receive one monthly consolidated bill from the Local Utility with its charges and NAP's charges. The Local Utility will set your payment due date and provide the payment address. You will continue to pay the bill following the Local Utility's billing and payment policies. Your payments remitted in response to a consolidated bill shall, to the extent required, be pro-rated in accordance with procedures adopted by the New Hampshire Public Utilities Commission (the "PUC"). If NAP invoices you for any unpaid supply charges that have not been paid pursuant to the Local Utility consolidated billing process and are no longer being billed to you by the Local Utility, you will pay each invoice in full within 20 calendar days of the invoice date or be subject to a late payment charge of 1.5% per month. For invoices provided by NAP, you acknowledge that NAP's ability to invoice you is dependent on the Local Utility furnishing to NAP all necessary information to comply with PUC rule 2004.06, and that the Local Utility is solely responsible for the accuracy of such information. In the absence of such information, NAP shall have the right to invoice you based on estimated or historical meter readings or other estimated information, calculated in a commercially reasonable manner and subject to later revision based on receipt of actual information. Any resulting adjustments will be reflected as a debit or credit on your subsequent invoice after actual usage information has been determined. Each invoice sent to you shall also be subject to adjustment for errors in arithmetic, computation, meter readings or other errors for a period of time for which the error is being re-billed, or for a period of 3 months following such time the Local Utility may be permitted under law to make such an adjustment, whichever is longer. In the event

you fail to provide payment when due for any electricity supplied under this Agreement, NAP shall have the right to terminate commodity service by providing at least 10 business days' prior written notice to you, at which time you may switch to another competitive electric power supplier or the Local Utility. A \$25 fee will be charged for all returned payments.

**9. Low Income Customers:**

i. **Electric Assistance Program ("EAP").** EAP is a discount electric rate available to qualifying customers from their Local Utility. **If you are currently on such a rate with the Local Utility, we suggest that you not enroll with NAP as the program benefits do not apply to NAP's charges.**

ii. **Social Service Agencies and Programs** For residential customers information, regarding social service agencies can be found by contacting your local Community Action Agency ("CAA") by either calling the PUC at 1.800.852.3793 or visiting the PUC's website at:

<http://www.puc.state.nh.us/Consumer/electricassistanc eprogram.htm> to obtain information based on the County in which your account is located. Additional information regarding EAP and other assistance programs, including Low Income Heating Assistance Program, Neighbor Helping Neighbor and Project Care, can be found on the Office of Consumer Advocate's Assistance Program page located at: <http://www.oca.nh.gov/assistanceprograms.htm>.

**10. Cancellation by Customer.** Subject to any applicable early termination fee, You may terminate this Agreement at any time with no advance notice. Customer may terminate this Agreement by notifying NAP, contracting with another Supplier, contracting with an aggregator granted agency authority, or contacting the Local Utility to select utility default service. The termination will not become effective until your Local Utility successfully switches you to the new service provider of your choice. Until that occurs, your obligations under this Agreement remain in full force and effect. **If your Fixed Price Period is 4 or more months**, and you terminate this Agreement prior to the expiration date of the Fixed Price Period, NAP will have the right to charge you an early termination fee of \$10.00 per month for each month remaining in the Fixed Price Period. **You may terminate this Agreement at any time while on a month-to-month Variable Rate or during a Fixed Price Period of 3 or fewer months without paying an early termination or cancellation fee.** You may provide written notice of termination at NAP's address listed in Section 14 or call NAP at 1-888-313-9086 or email NAP at [customercare@napower.com](mailto:customercare@napower.com). You will be responsible for all of NAP's charges related to service during the period that you are returning to the Local Utility or selecting another supplier.

**11. Cancellation by North American Power.** NAP may cancel or terminate the Agreement at any time, without penalty, by notifying you in writing no less than 10 business days prior to the termination. Termination becomes effective upon the processing of NAP's cancellation request by the Local Utility but not earlier than your next meter read date that falls not less than 10 business days after issuing the notice. You will be obligated to pay for the electricity supply service provided by NAP pursuant to the Agreement prior to the date that such cancellation becomes effective, including any applicable Local Utility late fees, fees or charges. Should NAP terminate the Agreement, you will be returned to your Local Utility's default electricity supply service unless you choose another competitive energy supplier.

**12. Acceptance and Amendments.** North American Power may amend the terms of this Agreement (other than price) at any time, consistent with any applicable law, rule or regulation, by providing notice to you of such amendment at least 30 days prior to the effective date thereof.

**13. Emergency Service Contacts.** In the event of an electric power outage or other emergency, you should use the following toll-free numbers to directly contact your Local Utility:

Liberty Utilities (formerly Granite State Electric Co.)	1-800-375-7413
Eversource Energy	1-800-662-7764
Unitil Energy Systems, Inc.	1-800-852-3339

**14. Customer Complaints And Dispute Resolution.** In the event of a billing dispute or a disagreement involving NAP's service hereunder, the parties will use their best efforts to resolve the dispute. You should contact NAP by telephone at 1-888-313-9086 or email at [customercare@napower.com](mailto:customercare@napower.com). You may also contact NAP by mail at 1500 Rankin Road, Ste. 200, Houston, TX 77073 ("NAP Address"). A dispute or complaint relating to a residential or small commercial customer may be submitted by either party at any time to the PUC pursuant to its Complaint Handling Rules and Procedures ("Procedures") by calling the PUC at 1.800.852.3793 or by writing to the PUC at: New Hampshire Public Utilities Commission, Consumer Services and External Affairs, 21 South Fruit Street, Suite 10, Concord NH 03301-2429 ("PUC Address"), or through its website at: <http://www.puc.state.nh.us>. Upon the filing of any complaint, NAP and/or the PUC Division ("Division") is authorized to investigate, and NAP is required to provide the Division with relevant information to assist with its investigation. If a dispute remains unresolved, the Division shall request a hearing before the Commission for any such resolution. You must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute. **ALL CLAIMS OF ANY KIND ARISING OUT OF, RELATING TO OR IN CONNECTION WITH THIS AGREEMENT THAT ARE NOT RESOLVED**

**THROUGH THIS PROCESS WILL BE HANDLED PURSUANT TO THE BINDING ARBITRATION; CLASS ACTION WAIVER PROVISION BELOW.**

**15. Binding Arbitration; Class Action Waiver.** In the unlikely event that you have any complaint or other dispute that is not resolved by NAP or the PUC to your satisfaction, or that we have a dispute with you and are unable to resolve it informally, we each agree to resolve such a dispute through binding arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA") or small claims court, instead of before any other court. We each agree to arbitrate solely on an individual basis, and understand and agree that this Agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

**YOU AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND NAP ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION OR TO SUE IN COURT (OTHER THAN AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT AS DESCRIBED HEREIN).**

A. Scope. The term "dispute" includes any claim or controversy between you and us concerning or related to your Agreement with us and the electricity or gas supply you receive from us under that Agreement, under any legal theory including contract, warranty, tort, statute or regulation. This includes any dispute concerning arbitrability or the existence, scope, validity, construction or enforceability of this Agreement; such disputes shall be resolved by the arbitrator and you and NAP each waive the right to have these matters resolved by any court, including by a jury trial. Notwithstanding the arbitrator's power to rule on its own jurisdiction and the validity or enforceability of the agreement to arbitrate, the arbitrator has no power to rule on the validity or enforceability of the agreement to arbitrate solely on an individual basis.

B. Notice of Dispute. If you have a dispute that has not been resolved by NAP or the PUC, send a Notice of Dispute by U.S. Mail to NAP at the NAP Contact Information below with your name, address, contact information, summary of the dispute, and how you would like the dispute resolved. We will do the same with you. If we have not resolved the dispute within 60 days after that notice is sent, either of us may start an arbitration.

C. Small Claims Court Option. As an alternative to arbitration, you may bring an individual case in your county of residence or where you do business, or Fairfield County, CT, if you meet the court's requirements, so long as it remains an individual case in that court. You may, but are not required to, mail us a Notice of Dispute and give us 60 days to resolve the dispute with you before filing in small claims court.

**D. Arbitration Procedure.** The AAA will conduct arbitration under its Commercial Arbitration Rules or, if you are an individual and the electricity or gas supplied under this Agreement is for personal or household use, or if the value of the dispute is \$75,000 or less whether or not you are an individual or how you use the supply, its Consumer Arbitration Rules, in each case as modified by this Agreement. For more information, see [www.adr.org](http://www.adr.org). To start an arbitration, submit the appropriate form available at <https://www.adr.org/Rules> to AAA and mail a copy to us. In a dispute involving \$25,000 or less, any hearing will be by telephone unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in your choice of your county of residence or principal place of business. The arbitrator may award the same damages to you individually as a court could.

The Customer Complaint and Dispute Resolution and Binding Arbitration; Class Action Waiver provisions shall survive termination or expiration of this Agreement.

**16. Customer Protections.** The services provided by NAP to you are governed by the terms and conditions of this Agreement. NAP will provide at least 10 days' notice prior to the cancellation of service to you. You may obtain additional information about your rights and responsibilities by contacting NAP at 1-888-313-9086 or the NAP Address or by contacting the PUC at 1.800.852.3793, or by writing to the PUC at the PUC Address, or through its website at: <http://www.puc.state.nh.us>.

**17. Default Liability.** Under no circumstances shall you or NAP be liable for any punitive, incidental, consequential, exemplary or indirect damages, or damages related to third-party claims, whether such damages or claims are based on contract, warranty, tort, negligence, strict liability or otherwise, or for lost profits arising from a breach of this Agreement. You acknowledge that your Local Utility and ISO-NE are exclusively responsible for the energy transmission and delivery system, and that NAP has no independent control over your Local Utility's or ISO-NE's systems and will have no liability for any of their acts or omissions.

**18. Choice of Laws.** This Agreement shall be construed under and shall be governed by applicable federal laws and the laws of the State of New Hampshire without regard to application of its conflicts of laws and principles.

**19. Change of Law/Regulatory Changes.** This Agreement is subject to present and future legislation, orders, rules, regulations, tariffs or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder, including but not limited to the Local Utility, the PUC, ISO-NE, the Federal Energy Regulatory Commission (FERC), or any of their successors (collectively, "Laws") (any change or change in interpretation of a Law, a "Change in Law"). If at any time during the term of this Agreement there is a Change in Law that results in NAP being prevented, prohibited, or frustrated from carrying out the terms

of this Agreement, or results in an increase in NAP's costs of providing electricity supply service to you under this Agreement, NAP may terminate this Agreement in accordance with the termination provisions above or adjust its rate/price to reflect any increases associated with such Change in Law upon 30 days' written notice to you.

**20. No Warranties.** UNLESS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NAP PROVIDES AND YOU RECEIVE NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE AND NAP SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**21. Force Majeure.** Notwithstanding any other provision of the Agreement, if we are unable to carry out any obligation under the Agreement due to a Force Majeure the Agreement will remain in effect but such obligation will be suspended for the duration of the Force Majeure, so long as we use commercially reasonable efforts to remedy our inability to perform. "Force Majeure" means an event not within our reasonable control that we are unable to prevent or overcome in a commercially reasonable manner by the exercise of due diligence. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; strike; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the Local Utility or ISO NE; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under our control.

**22. Taxes.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description, due and payable with respect to your performance of your obligations under this Agreement, shall be paid by you.

**23. Assignment.** You may not assign your interest or obligations under this Agreement without the written consent of NAP. NAP may sell, transfer, pledge, or assign the accounts, revenues, and proceeds hereof in connection with any financial agreement. NAP may assign this Agreement to another energy supplier, energy services company, or other entity authorized by the PUC. NAP must provide you 14 days' prior notice before the assignment of this Agreement to another service provider. Upon such assignment, you agree that NAP shall have no further obligations hereunder.

**24. Authorization.** By accepting the terms of service, Customer affirmatively consents to the Local Utility sharing billing and payment information with NAP, including Your participation in budget billing or extended payment arrangements. Further, You authorize NAP to obtain and review information including, but not limited to your credit history from credit reporting agencies, and Local Utility information including, but not limited to, consumption history, billing determinants, credit information, payment information, public assistance status, existence of

medical emergencies, status as to whether you have a medical emergency, are elderly, blind or disabled, have a tax status and/or are eligible for economic development or other incentives. This information may be used by NAP to determine whether it will commence and/or continue to provide energy supply service to you. By enrolling with NAP, you are designating NAP as an appropriate and authorized user of your information to enroll you and such enrollment shall constitute authorization to obtain from time to time all usage, billing, payment history and other related information with respect to your account from the Local Utility. Actual or attempted enrollment online, telephonic enrollment, and/or your execution of this Agreement shall constitute authorization for the release of this information to NAP and to third parties who need to use or be aware of such information in connection with your electric generation services, as well as to our agents, affiliates, contractors, and subcontractors for any billing, collection and/or marketing purposes. This authorization will remain in effect during the term of this Agreement. You acknowledge that you will be invoiced by the Local Utility, and that NAP's ability to collect payment for the electric supply portion on your bill is dependent on the Local Utility furnishing NAP with the necessary information. In the absence of such information, NAP shall have the right to use your information to collect any required information for bill collection purposes. NAP, at its sole discretion, may refuse to accept any customer with a credit score that does not meet or exceed its enrollment criteria. If accepted as a customer, you authorize NAP to report your payment experience to credit reporting agencies. This authorization will remain in effect during the entire term of this Agreement. You may rescind this authorization at any time by providing written notice thereof to NAP or calling NAP at 1-800-313-9086. NAP reserves the right to cancel this Agreement in the event you rescind the authorization. NAP considers all such customer information to be confidential, and will not release such confidential customer information that is not otherwise publicly available without written authorization from you, except as required by process of court, state, or a state or federal regulatory agency or other legal compulsion.

**25. Deposit Requirements.** NAP may require a deposit for certain customers. If a deposit is required, you will be notified by NAP as to the amount and the rate of interest paid on the deposit.

**26. Do Not Call Registry.** You may opt out of receiving any telemarketing calls by registering with the National Do Not Call Registry online at <https://www.donotcall.gov/register/reg.aspx> or by telephone by calling 1-888-382-1222 from the phone number you wish to register.

**27. UCC.** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of New Hampshire shall govern this Agreement and electricity shall be deemed a "good" for purposes of the UCC.

**28. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of either party to exercise any right hereunder shall not constitute a waiver hereunder and shall not impair the exercise of such rights at any later time.

**29. Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.

**30. Miscellaneous.** You will promptly notify NAP if there are any material changes in your energy consumption. There may be a delay before Local Utility switches your electricity supply to NAP; NAP is not responsible for any such delays.