

RESOLUTION NO. 23-13

BRICK TOWNSHIP MUNICIPAL UTILITIES AUTHORITY

February 25, 2013

**A Resolution Approving a Letter of Renewal With Hess Corporation
through May 31, 2016 for the Load Response Program**

WHEREAS, the Brick Township Municipal Utilities Authority (hereinafter referred to as the "Authority") is an autonomous public body duly incorporated pursuant to the provision of N.J.S.A. 40:14B-1 et seq.; and

WHEREAS, the Authority has been offered an extension by the Hess Corporation ("Hess") of the existing Agreement concerning the Load Response Program (hereinafter referred to as the "Agreement"); and

WHEREAS, the terms of the Agreement provide that if requested by Hess the Authority would agree to temporarily curtail utilization of electricity and as an alternative utilize its own generators, in order to save electricity during peak hours; and

WHEREAS, the Agreement provides monetary compensation to the Authority for entering into this Agreement, which compensation will be paid to the Authority whether or not it is requested to curtail electric usage; and

WHEREAS, the Agreement has been reviewed by the Authority's Solicitor and found to be acceptable as to form and content;

WHEREAS, the Authority had previously authorized (Resolutions 31 – 08 and 29 – 10) the Executive Director and Chief Financial Officer to take all necessary steps to execute the Agreements.

NOW, THEREFORE, BE IT RESOLVED this 25th day of February, 2012, by the Brick Township Municipal Utilities Authority as follows:

1. Based upon the recommendations of the Authority's professional staff, the Authority hereby approves the aforementioned Agreement, a true copy of which is on file at the office of the Executive Director and can be reviewed by the public during normal business hours.

2. The Authority authorizes and directs the Chairman Secretary and Executive Director to execute any and all necessary documents to implement the intent of this Resolution.


3. The Authority hereby approves the actions taken by its Executive Director or Chief Financial Officer in taking all necessary steps to execute the Agreement.

4. A copy of this resolution shall be forwarded to:

- (a) James Lacey, Executive Director
- (b) Frank Planko, Chief Financial Officer
- (c) Marie Sylvester, Executive Secretary
- (d) Hess Corporation

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Brick Township Municipal Utilities Authority at a meeting held on the 25th day of February, 2012, a quorum being present and voting in the majority.


George Cevasco
Assistant Secretary/Treasurer

BRICK UTILITIES

TO: J. Lacey
FROM: F. Planko
DATE: February 4, 2013
SUBJECT: Renewal – Hess Demand Response Program

As discussed at our Director's meeting this morning, the Hess Demand Response program is due for renewal. The Authority needs to notify Hess of our intentions by February 8th.

Please sign the attached enrollment confirmation, or authorize me to do so.

A handwritten signature in black ink, appearing to read "F. Planko", is written above a horizontal line.

W'd from J.M. 1/31



**PJM 2013-2014 Capability Period
Enrollment Recommendations**

Hess Demand Response

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Dear Brick Township Municipal Utilities,

We would like to take the opportunity to thank you for your continued participation in Demand Response programs through Hess. The re-registration period for the 2013-2014 PJM Emergency Demand Response Program, that runs from June 1, 2013 through May 31, 2014, is upon us.

Due to a variety of reasons which may include one or more of the following:

- Drop in PLC
- Fluctuating performance levels
- Historical facility usage above PLC level during event hours

Hess would like to discuss with you the ability for the following accounts to continue to participate in the PJM Emergency Demand Response Program. A representative from Hess will be reaching out to you to discuss the appropriate enrollment value, if any, pertaining to the account(s) below.

| Account Number | Facility Address | Zone | Estimated PLC | CLF |
|----------------|------------------|------|---------------|------|
| 100018881365 | 1551 Highway 88 | JCPL | 1099.45 | 1.05 |

* Definitions for each of the above can be found on the final page of this letter

IMPORTANT NOTE: Hess is in need of a signed copy of this letter indicating your intentions by **February 8, 2013.** Instructions on how to do so are dictated in the following pages. If we do not receive a signed copy by February 8, 2013, these accounts are at risk of not being enrolled in the program for the 2013 - 2014 capability period.

Should you need any clarification, please feel free to contact your Account Manager, **Julianna Yablonski**, or the Demand Response Team. We appreciate you selecting Hess Corporation as your Curtailment Service Provider.

Sincerely,

Hess Demand Response

Phone: (732)-750-7493

Fax: (732)-750-6670

Email: demandresponse@hess.com



**PJM 2013-2014 Capability Period
Enrollment Recommendations**

Hess Demand Response

Page 2 of 3

Based on discussions had with a Hess representative either via phone, e-mail or in-person, I agree to the below enrollment value(s):

| Account Number | Facility Address | Estimated PLC | Approved FSL Value |
|----------------|------------------|---------------|--------------------|
| 100018881365 | 1551 Highway 88 | 1099.45 | 20 |

* Definitions for each of the above can be found on the final page of this letter

Upon successful enrollment, Hess will provide me with an enrollment confirmation letter indicating final enrollment value(s) for my review.

JAMES F. LACIEZ
Print Name

E/D
Title


[Signature]
Signature

2-4-2013
Date

Phone: (732)-750-7493

Fax: (732)-750-6670

Email: demandresponse@hess.com

| | | |
|---|---|--------------------|
|  | PJM 2013-2014 Capability Period Enrollment Recommendations | |
| | Hess Demand Response | Page 3 of 3 |

Program Definitions:

- **Facility Address** - The street address associated with the account number on file. Please reach out to the Demand Response Team if this is not accurate.
- **Zone** – Transmission area in which the account is located. Events/tests are called by zone or sub-zone.
- **Peak Load Contribution (PLC)** – Excerpt from PJM Training, "...the quantity of a zone's peak load allocated to a site for a planning year." The estimated 2013-2014 PLC value is based off of how an account was running during the five PJM system peaks of summer 2012. Hess is using estimated PLC values, because the utility companies which issue the actual PLC values are still in the process of compiling them. The estimated values will be adjusted and reflected accordingly in the enrollment confirmation letters once the utility companies release the actual PLC values.
- **Firm Service Level (FSL)** indicates your account has to get **down to** the specified kW value in order to be in compliance. The registered account(s) PLC will be the maximum amount an account can be enrolled for and the method for deducing how much credit is received during curtailment.
- **Recommended FSL Value** – Based on a variety of account analysis, such as historical performances and historical usage from interval data, this is the kW level we recommend your account(s) register for in the program to get **down to**. As indicated, this is a recommendation and can be adjusted accordingly.
- **Corresponding Enrollment Value** – This is the total kW enrollment value for your account based of the PLC and the FSL level chosen. Equation: $\text{Enrolled} = (\text{PLC}/\text{Capacity Loss Factor}) - \text{FSL}$
- **Capacity Loss Factors (CLF)** – Each Customer is assigned a loss expansion factor by their respective utility company intended to gross-up customer loads to reflect transmission and distribution line energy loss.
- **Estimated Enrollment Value** - This is the total kW enrollment value for your account based of the PLC and the FSL level chosen. Equation: $\text{Enrolled Value} = (\text{PLC}/\text{Capacity Loss Factor}) - \text{FSL}$. This might change slightly depending on what the actual PLC is once released by the utility companies.

| | | |
|-----------------------|---------------------|---|
| Phone: (732)-750-7493 | Fax: (732)-750-6670 | Email: demandresponse@hess.com |
|-----------------------|---------------------|---|



HESS CORPORATION
 One Hess Plaza, Woodbridge, NJ 07095
 Phone: 1-800-HESS-USA
 www.hessenergy.com

E-LDEC / PRE

Account Manager: Julianna Yablonski

Date: 1/28/2013

CUSTOMER INFORMATION

Customer Name: Brick Township Municipal Utilities Authority
Contact Name: John Rouse
Contact Address: 1551 Highway 88
 Brick, NJ 08724
Contact Telephone: 7324587000 x245
Contact Fax: #

Payment Name: John Rouse
Payment Address: 1551 Highway 88
 Brick, NJ 08724
Payment Telephone: 7324587000 x245
Payment Fax: #

DEMAND RESPONSE PROGRAM TRANSACTION CONFIRMATION

This Transaction Confirmation confirms the terms of the Transaction entered into between Hess Corporation ("Seller"), and the customer above ("Buyer" or "Customer") pursuant to the terms of the Demand Response Program Agreement ("DRA") between Buyer and Seller dated:

Administrator: PJM

Business Rules: Applicable Business Rules can be located through the administrator website at www.pjm.com.

Program: Full Emergency Load Response: Capacity and Energy

Effective Date: 6/1/2013

Termination Date: 5/31/2016

The Transaction will renew automatically for the same period unless notice is given by either party 90 days prior to the Termination Date.

Acceptance must be confirmed by the Administrator in PJM's eLRS enrollment system in order for this transaction to be valid for each Delivery Year (DY).

Estimated Eligible Load Reduction Quantity (kW): 1,030 **Resource Type:** FSL **Firm Service Level:** 20 kW

Eligible Load Reduction Quantity may be adjusted based on addition/ removal of expected capabilities, application of Business Rules, including enrollment limitations based on the account's Electric Distribution Company (EDC) provided Peak Load Contribution (PLC) or engineering estimates. Eligible Load Reduction Quantity for each Delivery Year will be provided on an enrollment confirmation report.

For FSL accounts, enrollment will default to FSL provided unless Hess receives written authorization stating otherwise.

Eligible Load Reduction Payment Rate (\$/MW-Day)*: As per the Resource Clearing Price listed at www.pjm.com for the applicable delivery year and LDA.

Estimated Total Annual Capacity Credit: (Eligible Load Reduction Quantity / 1000) * Payment Rate * 365

Payment to Customer will be net of any cost/ credits as indicated in Section 3 of the DRA.

Customer is electing to net electricity purchases and demand response payments.

Customer is electing to participate in PLC Management.

| <u>Estimated Capacity Payment</u> | <u>Percent</u> | <u>Annual</u> | <u>Energy Payment Percent**</u> |
|-----------------------------------|----------------|---------------|---------------------------------|
| 6/1/2013 - 5/31/2014 | 80% | \$73,254 | 80% |
| 6/1/2014 - 5/31/2015 | 80% | \$37,304 | 80% |
| 6/1/2015 - 5/31/2016 | 80% | \$44,682 | 80% |

*Hess will use commercially reasonable efforts to obtain Capacity Supply Obligation for Demand Resources on behalf of our customers. Should Hess secure such obligations, the capacity payments for each Delivery Years will be based on the Resource Capacity Payment Rate for that Delivery Year for the Resource to which the Customer is assigned. Hess may from time to time elect to over subscribe a particular Resource. In the case of oversubscription, the Customer will receive his capacity weighted pro-rata share of the revenue received for the Resource to which the Customer is assigned.

** Event payments are based on actual event length, market energy prices and sharing percentage.

Participating Facilities

| Location | Utility | Utility Account Number(s) | Curtailable Load (kW) | Firm Service Level (kW) |
|----------------------------------|---------|---------------------------|-----------------------|-------------------------|
| 1551 Highway 88, Brick, NJ 08724 | JCPL | 100018881365 | 1,030 | 20 |

Notification

Notification will be made in advance of an ISO event. The people listed on Attachment A: Notification Details have been identified as the contacts at the customer's facility to be notified. A minimum of 2 notification contacts is required.

Please indicate your acceptance of the terms of this Transaction by returning to Seller an executed counterpart not later than 11:59 p.m., Eastern Standard Time, on February 22, 2013. If Seller does not receive such counterparts by such deadline, Seller's commitment and the agreements herein will expire at such time.

(Customer) **BRICK TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**

By: J. J. Lacey
 Name: J. J. LACEY
 Title: E/P
 Date: 2-4-2013

HESS CORPORATION

By: _____
 Name: _____
 Title: Manager, C&I Sales
 Date: _____



This Demand Response Program Agreement ("DRA") between Hess Corporation ("Hess"), a Delaware corporation, located at 1 Hess Plaza, Woodbridge, New Jersey 07095 and Brick Township Municipal Utilities Authority ("Buyer" or "Customer"), located at 1551 Highway 8B, Brick, NJ 08724 (each a "Party" and collectively "Parties") is entered into and effective as of 01/28/2013.

1. **Transactions.** The terms of this DRA apply to Customer's participation in the applicable load management program (each a "Program") sponsored by the related Administrator (as defined below) for which Hess acts, or will act, for a Participating Facility (as defined below) as Customer's demand response or similar service provider (each a "Transaction"). The details of each Transaction will be memorialized in a writing signed by both Parties (each, together with the relevant Transaction, a "Transaction Confirmation"). Each Transaction will commence on the later of the date specified on the relevant Transaction Confirmation or the applicable Administrator's acceptance of the relevant Participating Facility into the applicable Program (such date with respect to the relevant Transaction, the "Effective Date"), and continue through the termination date specified on the relevant Transaction Confirmation or such earlier date as (x) such Transaction Confirmation is terminated pursuant to this DRA or (y) the applicable Program is no longer in effect, whether due to termination by the related Administrator or otherwise (such date with respect to the relevant Transaction, the "Termination Date"). This DRA, related Transaction Confirmation(s) and any amendments (together, a single integrated, "Agreement") is the entire understanding between the Parties with respect to this Agreement and supersedes all other communication and prior writings with respect thereto; no oral statements are effective. For purposes of this Agreement, "Administrator" means with respect to each Program, the regional transmission organization, independent system operator, electric distribution company or other person or entity that sponsors such Program, the identity of which may be initially identified on the applicable Transaction Confirmation.
2. **Performance.** With respect to each Transaction, Customer authorizes Hess to be its agent to manage the participation of Customer's facility or facilities (each a "Participating Facility") specified on the relevant Transaction Confirmation for participation in the applicable Program specified on such Transaction Confirmation. Each Program is subject to the applicable terms and conditions posted on the Administrator's website, as may be revised from time to time at the discretion of the Administrator (with respect to each Program, the "Business Rules"), which website will be initially identified in each applicable Transaction Confirmation.
 - A. With respect to each Transaction, Hess will (upon receipt of a fully executed Transaction Confirmation for such Transaction and acceptance by the applicable Administrator of Customer into the relevant Program) perform or cause to be performed until the Termination Date for such Transaction, the following services unless not permitted under the relevant Business Rules, (i) when requested by Customer, assist Customer in estimating its curtailable load at the Participating Facility, (ii) when agreed to with the Customer, as indicated on the specific Transaction Confirmations, or required by the Business Rules, as determined by Hess, install and maintain interval metering and monitoring equipment at the Participating Facility (provided that the quantity, placement, functionality and other specifications and requirements of such equipment shall be in the sole discretion of Hess), at no out of pocket expense to the Customer; and (iii) such other services as provided in the relevant Business Rules as Hess and Customer mutually agree from time to time. Notwithstanding anything to the contrary in the Business Rules or otherwise, Hess shall be afforded a reasonable amount of time, as determined by Hess, to relay notification of any curtailment request from an Administrator to Customer, and any resulting delay in notification to Customer of such curtailment request shall not constitute a default by Hess or otherwise relieve Customer of its obligation to comply with such curtailment request. The costs associated with (i), (ii) and (iii) will be deducted from the relevant Program revenues prior to distribution. Customer's capacity, energy and ancillary services to be managed under such Program and the corresponding annualized value of the capacity as of the Effective Date for such Transaction are as specified by the relevant Administrator or on the relevant Transaction Confirmation. Hess may terminate any Transaction Confirmation or this DRA if it determines in its sole discretion that the assets and/or capacity of Customer are insufficient for participation in a Program or if the Customer violates any Business Rules.
 - B. Customer will (i) perform necessary reductions in capacity or energy delivery from the utility grid by reducing load and/or generating electricity ("Curtailment") at Hess' sole discretion for audits, Tests, and Events (as defined below); (ii) provide and maintain uninterrupted AC power and Communication Interface, as defined below, within three (3) feet of the metering and monitoring equipment; (iii) designate and provide notification to Hess of any changes in, a minimum of two (2) individuals (and applicable e-mail notification address(es)) for each Participating Facility to receive notification of Tests and Events; (iv) provide Hess and/or its subcontractors with access to each Participating Facility as may be required; and (v) cooperate and provide all required support to Hess or its representatives in connection with each Program and the related Administrator to obtain interval data from the Utility and on-site metering including upgrading installed metering and/or installing pulse outputs for Hess' use; and (vi) provide communications access supporting data frequency required by the Business Rules or as indicated on the specific Transaction Confirmations. To provide communication access, Customer will provide access to its Local Area Network (including, but not limited to, a static internet protocol address) and IT support to ensure Hess' real time access to the data and remote control interface via the Customer's Communication Interface. "Communication Interface" means intranet, high speed internet, a dedicated DSL or a dedicated phone line, as applicable, reasonably acceptable to Hess for performance under this DRA. "Event" or "Events" means the Curtailment in the amount required pursuant to the applicable curtailment notification(s) provided by Hess or the applicable Administrator by and during the relevant time period(s) specified in such Curtailment notification(s), and in any case subject to the applicable Business Rules for the Program. "Tests" means verification that Customer can provide its declared Curtailment performed in accordance of the Business Rules or at Hess' discretion (including pre-registration, any required re-test or testing as part of an aggregate of customers).
3. **Settlement and Payment.** Customer will be paid for performance only and payment to Customer of its share, as set forth in the relevant Transaction Confirmation, will be made following, and subject to, Hess' receipt of the applicable payments/credits from the respective Administrator under the Program relating to the Participating Facility. Any such payment will be net of any de-rating, penalties or costs incurred due to Program participation, in Hess' commercially reasonable discretion. Hess will have no liability to Customer due to the failure or refusal of an Administrator to make any payments or credits contemplated under such Program or this Agreement, unless due to the gross negligence of Hess. If there is a change between the estimated demand response value and the enrolled demand response value, Hess has the right to adjust the percentage share between the Parties in such manner as Hess shall reasonably determine. If Hess concludes that a change in Laws has a material adverse effect on Hess' ability to perform any of its obligations under this Agreement or any affected Transaction Confirmation or its ability to realize the economic benefits of this Agreement or any affected Transaction Confirmation, Hess may terminate this DRA and/or any Transaction Confirmation upon not less than (5) days prior written notice. "Law(s)" mean all relevant tariffs, laws, orders, rules (including Business Rules), taxes and regulations.
4. **Financial Responsibility.** Hess' acceptance of this DRA and any Transaction Confirmation is conditioned upon Customer's maintaining its creditworthiness during the term of this Agreement. If Hess determines in its good faith judgment that Customer's credit has been materially impaired, Hess may require additional security ("Credit Assurance"), including cash deposits, prepayments, letters of credit or other guaranty of payment or performance reasonably acceptable to Hess.
5. **Force Majeure.** A Party claiming Force Majeure will be excused from its obligations under Section 2 as long as it provides prompt notice of the Force Majeure and, to the extent practicable, uses due diligence to remove its cause and resume performance promptly. "Force Majeure" means a material, unavoidable occurrence beyond a Party's control, and does not include inability to pay, an increase or decrease in taxes, the economic hardships of a Party, or the full or partial closure of Customer's facilities, unless such closure itself is due to Force Majeure.
6. **Default.** "Default" means: (i) failure of either Party to perform its obligations under Section 2 or a breach by a Party of any material term or condition under this Agreement and such breach or failure is not cured within five (5) Business Days of receipt of written demand for cure; (ii) failure of Customer to provide satisfactory Credit Assurance within two (2) Business Days of Hess' demand; (iii) bankruptcy or insolvency of a Party, its guarantor, or its affiliates, however evidenced; (iv) failure of Customer to provide at least 120 days prior written notice to Hess of a shutdown or closure of a Participating Facility (whether full or partial); (v) failure of Customer to obtain Hess' consent to a transfer of title or ownership of a Participating Facility or portion thereof; (vi) Customer's anticipatory repudiation or attempted termination of this DRA or any Transaction Confirmation; (vii) failure of Customer or its affiliates to perform any material term or condition under any other energy-related agreement with Hess or its affiliates; (viii) insufficiency of the assets and/or capacity of Customer for participation in any Program relating to an outstanding Transaction, as determined by Hess under Section 2.A; (ix) failure of a Party to satisfy any representations and warranties contained in Section 8 and the failure is not cured within five (5) Business Days of receipt of written demand for cure; (x) a Participating Facility is withdrawn from, or is no longer eligible to participate under, any Program relating to an outstanding Transaction; or (xi) the failure of a Party to perform any obligation not specifically addressed above and the failure is not cured within five (5) Business Days of receipt of written demand for cure. "Business Day" means any day, other than a Saturday or Sunday, on which banks are open for commercial business in New York, New York.

Buyer's Initials _____

Seller's Initials _____

7. **Remedies.** Upon a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance due hereunder; (ii) upon written notice, provided that no notice is required with respect to Section 6(ii), accelerate any or all amounts owing between the Parties and terminate any or all Transactions; (iii) determine a settlement amount for each Transaction by calculating the gains, losses and costs (including reasonable attorney's fees, and any surveying and equipment costs if Customer is the defaulting Party); (iv) at its sole option and without prior notice to the defaulting Party or its affiliates, setoff any amount due to or from the defaulting Party or its affiliates, including any margin or other collateral, against any amount(s) payable to or by the non-defaulting Party or its affiliates under this Agreement or any other agreement or arrangement with the defaulting Party and/or its affiliates; and (v) calculate a net settlement amount by setting off against each other and aggregating into one amount all settlement amounts and all other amounts owing between the Parties or their affiliates. The gain or loss for each terminated Transaction may be calculated by any commercially reasonable method chosen by the non-defaulting Party. Any net settlement amount due from the defaulting Party to the non-defaulting Party will be paid within three (3) Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the net settlement amount shall accrue from the date due until the date of payment at 1.5% per month or, if lower, the maximum amount permitted by law.
8. **Representations and Warranties.** Each of the following are made by the applicable Party as of the date first above written, and are deemed to be repeated at all times while any Transaction is outstanding under this Agreement:
- A. Each Party represents and warrants that: (i) it is properly formed, validly existing and in good standing in its jurisdiction of formation and is properly registered in those jurisdictions necessary to perform this Agreement; (ii) the execution and delivery of this Agreement by it is within its powers, has been duly authorized and approved and does not violate any of the terms or conditions in its governing documents, any contract or any law applicable to it; (iii) this Agreement is legal, valid and binding and is enforceable against it in accordance with its terms; and (iv) there is no bankruptcy, insolvency, reorganization, receivership or other similar proceeding pending or being contemplated by it or, to its knowledge, threatened against it.
- B. Customer hereby represents and warrants the following: (i) Customer, based solely upon its own judgment, has determined its ability to participate and agrees to reduce a measurable and verifiable portion of each Participating Facility's load in the amount set forth in the applicable Transaction Confirmation; (ii) each Participating Facility is compliant with local and state permitting and registration requirements; (iii) each Participating Facility is capable of responding to curtailment requests within the time required in the applicable Business Rules; (iv) Customer (a) is not a party to any agreement with respect to any Participating Facility that would prohibit or limit participation in the relevant Program, (b) has not, directly or indirectly, appointed any person or entity other than Hess as a demand response or similar service provider for any Participating Facility, and (c) will not, directly or indirectly, enter into any agreement with, or obtain the service of, any other demand response or similar service provider for any Participating Facility while the related Transaction is outstanding; and (v) the acknowledgements in Section 9B below are true, complete and in full force and effect.
9. **Acknowledgements.**
- A. Each Party acknowledges and agrees that: (i) this Agreement is a forward contract, the Parties are forward contract merchants and this Agreement is a master netting agreement as defined in the United States Bankruptcy Code ("Code"); (ii) Hess is not a "utility" as defined in the Code; and (iii) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors.
- B. Customer acknowledges and agrees that: (i) if an electronic signature (or authorization) is utilized to execute this DRA, any Transaction Confirmation or any documents related thereto or to make changes to any electronic system, such electronic signature (and authorization) has been utilized by an authorized representative of Customer who has the power and authority to bind Customer, (ii) Hess may conclusively rely upon any instruction, request, direction or authorization (including by e-mail or other electronic communication) issued by Customer, its representative(s) or any person or entity that Hess reasonably believes to be authorized to issue such instruction, request, direction or authorization on Customer's behalf, in talking, or omitting to take, any action under or in connection with this Agreement or otherwise; and (iii) Hess may disclose information pertaining to the Customer and/or any Participating Facility to subcontractors it utilizes to perform its obligations under this Agreement and to any Administrator, local utilities, or such other persons or entities as to Hess deems necessary or appropriate for Customer's participation in the relevant Program or for Hess' performance under this Agreement.
10. **Right of First Refusal.** If at any time within five (5) years from the effective date of this DRA, Customer should wish to engage another provider of demand response or similar services for any location or facility that is not then a Participating Facility under an outstanding Transaction, Customer shall first give Hess a right of first refusal, which entitles, but does not obligate, Hess to match the commercial terms of any actionable written offer or proposal for such demand response or similar services (a "Proposal") within 45 days of Hess receiving a true and complete copy of such Proposal from Customer. Only if Hess does not agree to match the commercial terms of such Proposal within such 45-day period, may Customer engage such other person or entity for demand response of similar services. However, notwithstanding anything herein to the contrary, at no time may Customer engage, or otherwise obtain services from, any person or entity (other than Hess) for demand response of similar services, if such demand response or similar services (a) relate to any Participating Facility under an outstanding Transaction or (b) have, or would be reasonably expected to have, an effect on one or more outstanding Transactions or Hess' rights and obligations thereunder.
11. **Other.** (a) This Agreement is governed by New York law, without regard to any conflict of rules doctrine (other than provisions authorizing the selection of New York law and venue). (b) The Parties submit to the non-exclusive jurisdiction of the courts of the State of New York and any United States District Court located in New York. (c) Each Party waives its right to a jury trial regarding any litigation arising from this Agreement. (d) No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy. (e) Customer hereby indemnifies and holds Hess (and its officers, directors, employees, agents, subcontractors and other representatives) harmless from and against any and all claims arising out of or in connection with this Agreement for personal injury (including death), economic, contractual, or property damage (including reasonable attorneys fees and litigation costs). (f) Hess will not be liable to Customer or any other person or entity due to Hess' acts or omissions unless such acts or omissions are directly caused by the gross negligence or willful misconduct of Hess; provided that in no event shall Hess be liable for any damages arising out of or in connection with Customer's actual curtailment or non-curtailment under any Program. Hess will not be liable to Customer for any error in or failure of the hardware or software utilized by Customer to participate in any Program; for any failure in Customer's internet connection or electric meters (whether or not provided by, or through, Hess); or, as provided for in Section 3, for the failure or refusal of an Administrator to make or cause to be made payments or credits under a Program or this Agreement. Upon termination of each particular Transaction, Customer automatically assumes ownership rights of any property and equipment installed by Hess or its subcontractors in or upon the relevant Participating Facility in connection with such Transaction and hereby releases Hess from any and all liability in connection therewith. Except as expressly provided in this Agreement, in no event shall either Party be liable for any punitive, incidental, consequential, indirect, special, or exemplary damages, lost profits or other business interruption damages, by statute, in tort or contract, provided, that this limitation shall not apply to subsection (e) directly above. In no event will Hess' aggregate liability under this Agreement for any reason, whether arising in contract, tort, warranty, negligence, strict liability, product liability or otherwise, exceed an amount equal to the lesser of (i) \$100,000 or (ii) Hess' share of the monthly revenues actually received by it for its services under this Agreement in the six-month period immediately prior to the date which the event giving rise to the claim occurred, and Customer hereby releases Hess (and its officers, directors, employees, agents, subcontractors and other representatives) from any and all claims and/or liabilities in excess of such amount. (g) Notwithstanding anything to the contrary in any Business Rules, all notices are required to be in writing and shall be delivered by letter, facsimile or other documentary form and are effective upon receipt. A Party may change its addresses by providing notice of same in accordance herewith. Notices shall be sent to the address listed above for the Customer and for Hess shall be sent to Hess Corporation, One Hess Plaza, Woodbridge, NJ 07095, Phone: 732-750-7493, Fax: 732-750-6670, Attn: Manager - Solutions Operations. (h) No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties. (i) Hess may assign this Agreement (in whole or in part) without Customer's consent. Customer may not assign this Agreement (or any portion thereof) without Hess' prior written consent; which consent will not be unreasonably withheld. In addition, Hess may pledge, encumber, or assign the accounts, revenues, or proceeds of this Agreement (or any portion thereof) in connection with any financing or other financial arrangements without Customer's consent; in which case Hess shall not be discharged from its obligations to Customer under this Agreement. (j) This Agreement (including any Transaction Confirmations hereunder) may be executed in separate counterparts by the Parties, including by facsimile, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument. (k) The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement. (l) Any originally executed copy of this Agreement and other related documents may be digitally copied, photocopied, or on computer tapes and disks ("Imaged Agreement"). The Imaged Agreement will be admissible in any judicial, arbitration, mediation or administrative proceedings between the Parties in accordance with the applicable rules of evidence; provided that neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form. (m) Where multiple parties are Party to this Agreement with Hess and are represented by the same agent, it is agreed that this Agreement will constitute a separate agreement with each such Party, as if each such Party had executed a separate Agreement. (n) This DRA can be terminated upon at least sixty (60) days prior written notice by either Party to the other Party; provided, however, that it will remain in effect with respect to the Transaction Confirmation(s) entered into prior to the date of the termination until both Parties have fulfilled all of their obligations with respect to the Transaction evidenced thereby.

Buyer's Initials _____

Seller's Initials _____

unless such Transaction Confirmation has been earlier terminated pursuant to this DRA. (o) The Customer will not disclose the terms of this Agreement, without prior written consent of Hess, to any third party, other than the Customer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings, pricing indices, and credit ratings agencies, provided that if Customer receives a demand for disclosure pursuant to court order or other proceeding will first notify Hess, to the extent practicable, before making the disclosure. (p) Hess will own all operational data, engineering studies, metering data, and other information it collects under or in connection with this Agreement and Customer will have no right to disclose such information. (q) Customer shall pay or reimburse Hess for any applicable taxes imposed in connection with a Program or sales of capacity. (r) If any provision of this Agreement is held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the parties will be construed and enforced (s) Any capitalized terms not defined in this DRA shall have the meaning defined in the respective Transaction Confirmation, or if not defined therein, in the applicable Business Rules, or if such term is not defined therein then it shall have the well-known and generally accepted technical or trade meanings customarily attributed to it in the demand response industry, as applicable. (t) The provisions of this Section 11, including without limitation, subsections (e), (f), (o) and (p) and Section 10, will survive the termination or expiration of this Agreement regardless of the reason for termination or expiration.

IN WITNESS WHEREOF, this DRA is entered into and effective as of the date first written above.

(Customer) **BRICK TOWNSHIP MUNICIPAL UTILITIES AUTHORITY**
By: _____
Name: B. P. LACY
Title: CEO

HESS CORPORATION
By: _____
Name: _____
Title: Manager, C&I Sales

Brick Township Municipal Utilities Authority Demand Response Program Agreement
Attachment A: Notification Details

Notification will be made in advance of an ISO event. The following people have been identified as contacts at the customer's facility to be notified. A minimum of 2 notification contacts is required.

Primary Contact:

Name: John Rouse
Address: 1551 Highway 88
City / State / Zip: Brick, NJ 08724
Phone #: 7324587000 x245
Cell#:
Email: jrouse@brickmua.com

Secondary Contact:

Name: Secondary Contact
Address: 1551 Highway 88
City / State / Zip: Brick, Brick 08724
Phone #: Secondary Phone
Cell#: Secondary Mobile
Email: Secondary Email

Additional Contact:

Name:
Address:
City / State / Zip:
Phone #:
Cell#:
Email:

Additional Contact:

Name:
Address:
City / State / Zip:
Phone #:
Cell#:
Email:

Additional Contact:

Name:
Address:
City / State / Zip:
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Additional Contact:

Name:
Address:
City / State / Zip:
Phone #:
Cell#:
Email:

Additional Contact:

Name:
Address:
City / State / Zip:
Phone #:
Cell#:
Email:

Brick Township Municipal Utilities Authority

Date: 01/28/2013

Attn: Meter and Test Dept.

To Whom It May Concern:

To facilitate our participation in a demand response program that we have elected to participate in, we here by authorize Hess Corp. or its agent, Ziphany, LLC of 410 Main Street, Buffalo, NY, to:

1. Order meter upgrades such as pulse outputs for any and all meters under the following account(s):
Utility (ies): **JCPL** Account Number(s): **100018881365**

and/or

2. Request and receive account and meter information for the above including access to available interval data for said account(s). If access to interval data requires a user name, password or any other such information please provide this.

Any costs associated with the services above are to be billed to Ziphany, LLC.

This authorization should remain in effect until: 7/30/2016

Please direct any questions you may have on this matter to me at 7324587000 x245.

Thank you.

Sincerely,

John Rouse (Brick Township Municipal Utilities Authority)

cc: Hess Corp.
Ziphany LLC

CUSTOMER USAGE INFORMATION AUTHORIZATION
(Non-Residential)

I hereby authorize my electric utility to act in my behalf for the purpose of obtaining information about my historical energy usage and billing information and consent to the release of same so that the Company named herein or their agent may evaluate my energy usage patterns and make me an offer to supply energy. The utility considers all customer usage information to be confidential. This authorization in no way binds me to the purchase of any service or product from the Company named herein and is to be used for the sole purpose of determining my offer price of electricity service or the provision of other energy-related services.

Supplier/Consultant Information (please print):

Rachel Howley representing **Hess Corporation**
(Individual) (Company)

Address **1 Hess Plaza, Woodbridge, NJ 07095**

Email Address **rhowley@hess.com** Telephone Number **(732) 750 – 7110**

Type of Data Requested (select one):

- Sixty (60) minute interval data (if available) provided in ASCII text file
- Monthly billing information (will be provided if 60 minute interval data is unavailable)

NOTE: Billing information will typically cover the most recent twelve-month period.

Company Information:

My Utility: **JCPL**

Company Name: **Brick Township Municipal Utilities Authority**

Address: **1551 Highway 88, Brick, NJ 08724**

Business Contact Name: **John Rouse** Telephone Number: **7324587000 x245**

Email Address: **jrouse@brickmua.com** Fax Number:

Party other than customer to be Billed, if allowed by your utility: **Hess Corporation**

Business Representative's Signature _____ Date: _____

I wish to have this authorization valid until **7/30/2016**

Account Number (s) (As shown on Latest Bill)

100018881365

Return to Hess Corporation, Energy Marketing
Fax: 732 – 750 – 6670

Each utility has specific rules for releasing information, and this service may be subject to a charge by the utility.