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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

**FORM 8-K**

CURRENT REPORT PURSUANT  
TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported)

August 11, 2005 (August 10, 2005)

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**NRG Energy, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-15891

(Commission File Number)

41-1724239

(IRS Employer Identification No.)

211 Carnegie Center

(Address of Principal Executive Offices)

Princeton, NJ 08540

(Zip Code)

609-524-4500

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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### **Item 1.01. Entry Into a Material Definitive Agreement**

#### Stock Purchase Agreement

On August 10, 2005, NRG Energy, Inc., or NRG, entered into a Stock Purchase Agreement with Credit Suisse First Boston Capital LLC, or CSFB, pursuant to which NRG sold 250,000 shares of its 3.625% Convertible Perpetual Preferred Stock, or the Preferred Stock, with a liquidation value of \$1,000 per share for a gross purchase price of \$250,000,000, to CSFB on August 11, 2005. The terms of the Preferred Stock are described below in Item 5.03 of this Current Report on Form 8-K.

NRG will apply the net proceeds from the sale of the Preferred Stock to redeem \$228,750,000 in aggregate principal amount of NRG's outstanding 8% Notes and for general corporate purposes. The Stock Purchase Agreement contains customary representations and warranties, conditions to closing and indemnification provisions. The foregoing description of the Stock Purchase Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Stock Purchase Agreement, which is filed as Exhibit 10.1 hereof and is incorporated herein by reference.

#### Accelerated Share Repurchase Agreement

On August 11, 2005, NRG entered into an Accelerated Share Repurchase Agreement with CSFB, pursuant to which NRG repurchased \$250,000,000 of its common stock, par value \$0.01 per share, or the Common Stock, on that date. The number of shares of Common Stock repurchased by NRG is equal to \$250,000,000 divided by the closing price per share on August 10, 2005, or 6,346,788 shares. NRG funded the repurchase with cash on its balance sheet. On or about February 13, 2006, NRG will receive from, or pay to, CSFB a purchase price adjustment based upon the weighted average value of NRG's Common Stock over a period of approximately six months, subject to a minimum price of 97% and a maximum price of 103% of the closing price per share on August 10, 2005.

The foregoing description of the Accelerated Share Repurchase Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Accelerated Share Repurchase Agreement, which is filed as Exhibit 10.2 hereof and is incorporated herein by reference.

### **Item 3.02. Unregistered Sales of Equity Securities**

On August 11, 2005, NRG sold 250,000 shares of the Preferred Stock to CSFB, in a private placement in reliance on Section 4(2) of the Securities Act of 1933, as amended. See Item 1.01 of this Current Report on Form 8-K for a description of the Stock Purchase Agreement entered into with CSFB and Item 5.03 of this Current Report on Form 8-K for a description of the Certificate of Designations establishing the Preferred Stock.

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**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

On August 11, 2005, NRG filed with the Secretary of State of the State of Delaware the Certificate of Designations relating to its 3.625% Convertible Perpetual Preferred Stock. A copy of the Certificate of Designations is filed as Exhibit 3.1 hereof and is incorporated herein by reference.

The Preferred Stock has a liquidation preference of \$1,000 per share. Holders of Preferred Stock are entitled to receive, out of funds legally available therefore, cash dividends at the rate of 3.625% per annum, payable in cash quarterly in arrears on March 15, June 15, September 15 and December 15 of each year, commencing on December 15, 2005. Each share of Preferred Stock is convertible during the 90-day period beginning August 11, 2015 at the option of NRG or the holder. Holders tendering Preferred Stock for conversion shall be entitled to receive, for each share of Preferred Stock converted, \$1,000 in cash and a number of shares of Common Stock equal to the product of (x) the greater of (i) the difference between the closing sale price of the Common Stock on each of the 20 consecutive scheduled trading days starting on the date 30 scheduled exchange business days immediately prior to the conversion date, or the Market Price, and \$59.085 and (ii) zero, times (y) \$1,000 divided by the closing price of Common Stock on August 10, 2005, which is 25.38715. If, upon conversion, the Market Price is less than \$39.39, then the Holder will deliver to NRG cash or a number of shares of Common Stock equal in value to the product of (A) the Threshold Price minus the Market Price, times (B) 25.38715. NRG may elect to make a cash payment in lieu of delivering shares of Common Stock in connection with such conversion, and NRG may elect to receive cash in lieu of shares of Common Stock, if any, from the Holder in connection with such conversion.

If a "Fundamental Change" occurs (as defined in the Certificate of Designations), the holders of the Preferred Stock will have the right to require NRG to repurchase all or a portion of the Preferred Stock for a period of time after the fundamental change at a purchase price equal to 100% of the liquidation preference, plus accumulated and unpaid dividends.

The Preferred Stock will be, with respect to dividend rights and rights upon liquidation, winding up or dissolution: senior to all classes of common stock and each other class of capital stock or series of preferred stock issued by NRG, the terms of which expressly provide that such class or series will rank junior to the Preferred Stock; on a parity with any class of capital stock or series of preferred stock issued by NRG, the terms of which expressly provide that such class or series will rank on a parity with the Preferred Stock, and on a parity with NRG's 4.0% Convertible Perpetual Preferred Stock; junior to each class of capital stock or series of preferred stock issued by NRG, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock; and junior to all of NRG's existing and future debt obligations and all of its subsidiaries' existing and future liabilities and capital stock held by persons other than NRG or its subsidiaries.

Title to the Preferred Stock may not be transferred to an entity that is not an affiliate of CSFB without the consent of NRG, such consent not to be unreasonably withheld.

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**Item 8.01. Other Events**

On August 11, 2005, NRG issued a press release announcing the closing of its sale of 250,000 shares of Preferred Stock and the entry into an accelerated share repurchase program. A copy of the press release is filed herewith as Exhibit 99.1 and is incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits**

(c) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	Certificate of Designations of 3.625% Convertible Perpetual Preferred Stock, as filed with the Secretary of State of the State of Delaware on August 11, 2005.
10.1	Stock Purchase Agreement, dated as of August 10, 2005, by and between NRG Energy, Inc. and Credit Suisse First Boston Capital LLC.
10.2	Accelerated Share Repurchase Agreement, dated as of August 11, 2005, by and between NRG Energy, Inc. and Credit Suisse First Boston Capital LLC.
99.1	Press Release, dated August 11, 2005.

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NRG Energy, Inc.  
(Registrant)

By: /s/ TIMOTHY W. J. O'BRIEN  
Timothy W. J. O'Brien  
Vice President and General Counsel

Dated: August 11, 2005

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**Exhibit Index**

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NRG ENERGY, INC.

CERTIFICATE OF DESIGNATIONS

establishing the

Voting Powers, Designations, Preferences, Limitations,  
Restrictions, and Relative Rights of

3.625% Convertible Perpetual Preferred Stock

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Pursuant to Section 151 of the

General Corporation Law of the State of Delaware

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NRG ENERGY, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Issuer"), does hereby certify that (i) pursuant to authority conferred upon the Board of Directors of the Issuer by its Amended and Restated Certificate of Incorporation and pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware, the Board of Directors authorized the creation and issuance of the Issuer's 3.625% Convertible Perpetual Preferred Stock (the "Preferred Stock"), and (ii) the following resolution fixing the designations, preferences and rights of such Preferred Stock, which was duly adopted by the Board of Directors, on August 5, 2005, remains in full force and effect. Certain capitalized terms used herein are defined in Article 10.

NOW THEREFORE IT IS RESOLVED, that pursuant to Section 151 of the General Corporation Law of Delaware and the authority expressly granted to and vested in the Board of Directors of the Issuer by the provisions of the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of the Issuer, the Board of Directors hereby creates a series of Preferred Stock, par value \$0.01 per share, to consist initially of 250,000 shares, with the designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions as set forth in this Certificate of Designations:

#### **1. Designation and Number of Shares**

1.1 The series will be known as the 3.625% Convertible Perpetual Preferred Stock.

1.2 The Preferred Stock will be a series consisting of 250,000 shares with a Liquidation Preference of \$1,000 per share of the authorized but unissued preferred stock of the Issuer.

#### **2. Dividends**

##### 2.1 Payment of Dividends

(a) Holders of Preferred Stock will be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the payment of dividends, cash dividends at the annual rate of 3.625% of the Liquidation Preference per share. Such dividends shall be payable to Holders of Preferred Stock in arrears in equal amounts quarterly on each Dividend Payment Date, beginning December 15, 2005, in preference to, and in priority over, dividends on any Junior Stock but subject to the rights of any Holders of Senior Stock or Parity Stock.

(b) Dividends shall be cumulative from the initial date of issuance or the last Dividend Payment Date for which accumulated dividends were paid, whichever is later, whether or not funds of the Issuer are legally available for the payment of such dividends. Each such dividend shall be payable to the Holders of record of shares of the Preferred Stock on each Dividend Payment Date, as they appear on the Issuer's stock register at the close of business on such Dividend Payment Date. Accumulated and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any Dividend Payment Date.

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(c) Accumulated and unpaid dividends for any past Dividend Period (whether or not earned and declared) shall cumulate dividends at the annual rate of 8.0% and shall be payable in the manner set forth in this Section 2.1.

(d) The amount of dividends payable for each full Dividend Period for the Preferred Stock shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for the initial Dividend Period, or any other period shorter or longer than a full Dividend Period, on the Preferred Stock shall be computed on the basis of twelve 30-day months and a 360-day year. Dividends on the shares of Preferred Stock will be payable in cash. Holders of Preferred Stock shall not be entitled to any dividends in excess of cumulative dividends (which, for the avoidance of doubt, shall include dividends paid or accumulated at an increased rate pursuant to Section 8.2), as herein provided, on the Preferred Stock.

(e) No dividend shall be declared or paid or set apart for payment or other distribution declared or made, whether in cash, obligations or shares of Capital Stock of the Issuer or other property, directly or indirectly, upon any shares of Junior Stock or Parity Stock, nor shall any shares of Junior Stock or Parity Stock be redeemed, repurchased or otherwise acquired for consideration by the Issuer through a sinking fund or otherwise, unless all accumulated and unpaid dividends through the most recent Dividend Payment Date (whether or not there are funds of the Issuer legally available for the payment of dividends) on the shares of Preferred Stock and any Parity Stock have been or contemporaneously are declared and paid in full or set apart for payment; provided, however, that, notwithstanding any provisions of this paragraph (e) to the contrary, the Issuer may redeem, repurchase or otherwise acquire for consideration Parity Stock pursuant to a purchase or exchange offer made on the same terms to all Holders of the Preferred Stock and Parity Stock. When dividends are not paid in full, as aforesaid, upon the shares of Preferred Stock, all dividends declared on the Preferred Stock and any other Parity Stock shall be declared and paid either (i) pro rata so that the amount of dividends so declared on the shares of Preferred Stock and each such other class or series of Parity Stock shall in all cases bear to each other the same ratio as accumulated dividends on the shares of Preferred Stock and such class or series of Parity Stock bear to each other or (ii) on another basis that is at least as favorable as clause (i) to the Holders of the Preferred Stock entitled to receive such dividends.

### **3. Ranking**

3.1 The Preferred Stock will, with respect to dividend distributions and distributions upon the liquidation, winding up or dissolution of the Issuer, rank:

(a) senior to all classes of Common Stock and each other class of Capital Stock or series of preferred stock issued by the Issuer, the terms of which expressly provide that such class or series will rank junior to the Preferred Stock as to dividend distributions and distributions upon the liquidation, winding up or dissolution of the Issuer (collectively, with the Common Stock, referred to as the “Junior Stock”);

(b) on a parity with any class of Capital Stock or series of preferred stock issued by the Issuer, the terms of which expressly provide that such class or series will rank on a parity with the Preferred Stock as to dividend distributions and distributions upon the liquidation,

winding up or dissolution of the Issuer, and the Issuer's outstanding Existing Preferred Stock (collectively referred to as "Parity Stock");

(c) junior to each class of Capital Stock (including warrants, rights, calls or options exercisable or convertible into warrants, rights or calls) or series of preferred stock issued by the Issuer, the terms of which expressly provide that such class or series will rank senior to the Preferred Stock as to dividend distributions and distributions upon liquidation, winding up or dissolution of the Issuer (collectively referred to as "Senior Stock"); and

(d) junior to all the Issuer's existing and future debt obligations and all of its Subsidiaries' (i) existing and future liabilities and (ii) Capital Stock held by Persons other than the Issuer or its Subsidiaries.

3.2 Except as otherwise provided herein, the Issuer is entitled to amend the Certificate of Incorporation to authorize one or more additional series of preferred stock, file certificates of designation, and issue without restriction from time to time, any series of Junior Stock, Parity Stock or Senior Stock.

#### **4. Conversion**

##### **4.1 Conversion Rights**

Each Holder of Preferred Stock shall have the right, at its option, at any time during the 90-day period beginning on August 11, 2015, to convert, subject to the terms and provisions of this Article 4, any or all of such Holder's shares of Preferred Stock into cash and shares of Common Stock. A holder may convert fewer than all of its shares of Preferred Stock.

Any Holder of Preferred Stock intending to convert its shares of Preferred Stock shall give the Issuer written notice of such intention at least 40 Scheduled Trading Days prior to the intended date of such conversion. The Issuer shall, within five Scheduled Trading Days of the receipt of such notice, confirm in writing to such Holder its determination whether or not to make a cash payment in lieu of delivering the Net Shares in connection with such conversion and whether or not to receive cash in lieu of shares of Common Stock, if any, from such Holder pursuant to Section 8.1 in connection with such conversion, which determination shall be irrevocable and binding on the Issuer.

The Issuer shall have the right, at its option, at any time during the 90-day period beginning on August 11, 2015, to purchase any or all of any Holder's shares of Preferred Stock; provided that the Issuer gives such Holder written notice of its decision to exercise such right at least 40 Scheduled Trading Days prior to the intended date of such purchase; and provided, further, that upon receipt of such written notice, such Holder shall be deemed to have elected to convert on the date specified in such written notice the shares of Preferred Stock with respect to which the Issuer is exercising such right, and such shares of Preferred Stock shall be converted in accordance with the terms and provisions of Section 4.2; and provided, further, that the Issuer confirms in such notice its determination whether or not to make a cash payment in lieu of delivering the Net Shares in connection with such conversion and whether or not to receive cash in lieu of shares of Common Stock, if any, from such Holder pursuant to Section 8.1 in

connection with such conversion, which determination shall be irrevocable and binding on the Issuer.

#### 4.2 Conversion Procedures

Conversion of shares of the Preferred Stock may be effected by any Holder thereof upon the surrender to the Issuer, at the principal office of the Issuer or at the office of the Transfer Agent as may be designated by the Board of Directors, of the certificate or certificates for such shares of Preferred Stock to be converted accompanied by a complete and manually signed Conversion Notice (as set forth in the form of Preferred Stock certificate attached hereto) along with appropriate endorsements and transfer documents as required by the Transfer Agent. In case such Conversion Notice shall specify a name or names other than that of such Holder, such notice shall be accompanied by payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names.

Other than such taxes, the Issuer shall pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of the Preferred Stock pursuant hereto. The conversion of the Preferred Stock will be deemed to have been made on the date (the "Conversion Date") such certificate or certificates have been surrendered and the receipt of such Conversion Notice and payment of all required transfer taxes, if any (or the demonstration to the satisfaction of the Issuer that such taxes have been paid). Promptly (but no later than three Exchange Business Days) following the Conversion Date, the Issuer shall, in the case of cash, pay or cause to be paid in immediately available funds, an amount equal to, or, in the case of shares of Common Stock, deliver or cause to be delivered, (i) the Cash Conversion Amount, accumulated and unpaid dividends pursuant to Section 4.3 and certificates representing a number of validly issued, fully paid and nonassessable full shares of Common Stock equal to the Net Share Amount (or cash in lieu of such shares as provided in Section 4.4), and (ii) if less than the full number of shares of the Preferred Stock evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted. On the Conversion Date, the rights of the Holder of the Preferred Stock shall cease except for the right to receive cash and shares of Common Stock and the Person entitled to receive the shares of Common Stock shall be treated for all purposes as having become the Holder of such shares of Common Stock at such time.

#### 4.3 Dividend and Other Payments Upon Conversion

If a Holder of shares of Preferred Stock exercises conversion rights, such shares will cease to accumulate dividends as of the end of the day immediately preceding the Conversion Date. Upon conversion of the Preferred Stock, the Holder shall be entitled to all accumulated and unpaid dividends in respect of those shares of Preferred Stock to the Conversion Date (including, for the avoidance of doubt, dividends accumulated and unpaid since the most recent Dividend Payment Date).

#### 4.4 Conversion Value of Preferred Stock Tendered

Holders tendering the Preferred Stock for conversion shall be entitled to receive, for each share of Preferred Stock converted:

(a) an amount in cash (the “Cash Conversion Amount”) equal to the Issue Price; and

(b) a number of shares (the “Net Share Amount”) of Common Stock of the Issuer (the “Net Shares”) with a value determined by the Calculation Agent based on the Market Price equal to the product of (x) the greater of (i) the difference between the Market Price and the Conversion Price and (ii) zero and (y) the Number of Underlying Shares (the “Net Share Value”).

If the Issuer had elected in the written notice delivered to the converting Holder of the shares of Preferred Stock subject to conversion in accordance with Section 4.1 to make a cash payment, then the Issuer shall, in lieu of delivering the Net Shares, pay to such Holder in cash an amount equal to the Net Share Value.

Payment of the Cash Conversion Amount and all accumulated and unpaid dividends as provided in Section 4.3 and delivery of the Net Shares (or cash in an amount equal to the Net Share Value) shall be deemed to satisfy the Issuer’s obligation to pay the Liquidation Preference.

Anything herein to the contrary notwithstanding, in no event shall the Issuer be required to deliver more than 8,000,000 shares of Common Stock, subject to adjustment as provided herein (such number, including such adjustments, the “Maximum Number of Shares”).

#### 4.5 Total Shares

If more than one share of the Preferred Stock shall be surrendered for conversion by the same Holder at the same time, the amount of the Cash Conversion Amount and any accumulated and unpaid dividends and Net Share Amount (or the Net Share Value) shall be computed on the basis of the total number of shares of the Preferred Stock so surrendered.

#### 4.6 Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock

(a) The Issuer shall: (i) at all times reserve and keep available, free from preemptive rights and not reserved or kept available for issuance upon conversion or settlement of any other security or transaction, for issuance upon the conversion of shares of the Preferred Stock such number of its authorized but unissued shares of Common Stock, or shares of Common Stock held in treasury, as shall from time to time be sufficient if necessary to permit the conversion of all outstanding shares of the Preferred Stock into the Maximum Number of Shares; (ii) prior to the delivery of any securities that the Issuer shall be obligated to deliver upon conversion of the Preferred Stock, comply with all applicable federal and state laws and regulations that require action to be taken by the Issuer (including, without limitation, the registration or approval, if required, of any shares of Common Stock to be provided for the purpose of conversion of the Preferred Stock hereunder); and (iii) ensure that all shares of Common Stock delivered upon conversion of the Preferred Stock, upon delivery, be duly and

validly issued and fully paid and nonassessable, free of all liens and charges, not subject to any preemptive rights, freely tradable and in unlegended form.

(b) The Issuer agrees to use its commercially reasonable best efforts to secure as soon as practicable the approval of the Exchange for the listing of such number of its authorized but unissued shares of Common Stock, as shall be sufficient if necessary to permit the conversion of all outstanding shares of the Preferred Stock into the Maximum Number of Shares. Until such time as the Issuer shall have obtained such approval from the Exchange, all conversions of shares of the Preferred Stock shall be satisfied using shares of Common Stock of the Issuer held in treasury and, until such approval has been obtained from the Exchange, the Issuer shall reserve at all times a sufficient number of shares of Common Stock in treasury for such conversions. The Issuer shall have no further obligations under this paragraph after such approval has been obtained from the Exchange.

#### 4.7 Adjustments to Conversion Price Upon Potential Adjustment Events

(a) Following the declaration by the Issuer of the terms of any Potential Adjustment Event, the Calculation Agent will determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Common Stock or an effect on the theoretical value of options on the Common Stock, and, if so, will (i) make the corresponding adjustment(s), if any, to the Conversion Price, as well as to any other variable relevant to the exercise, settlement, payment or other terms of the Preferred Stock as the Calculation Agent determines appropriate to account for the effect of such event on the Preferred Stock and (ii) determine the effective date(s) of the adjustment(s). Upon request of the Issuer, the Calculation Agent will provide documentation setting forth in reasonable detail the basis for such adjustments.

(b) A "Potential Adjustment Event" means any of the following:

- (i) a subdivision, consolidation or reclassification of the Common Stock, or a free distribution or dividend of any Common Stock to existing holders by way of bonus, capitalization or similar issue;
- (ii) a distribution, issue or dividend to existing holders of the Common Stock of (A) such Common Stock, or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Issuer equally or proportionately with such payments to holders of such Common Stock, or (C) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the Issuer as a result of a spin-off or other similar transaction, or (D) any other type of securities, rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price as determined by the Calculation Agent;
- (iii) a cash dividend or cash distribution;
- (iv) a call by the Issuer in respect of shares of Common Stock that are not fully paid;

(v) a repurchase by the Issuer or any of its Subsidiaries of shares of Common Stock whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise (except for such repurchases effected under the ASB Agreement);

(vi) in respect of the Issuer, an event that results in any shareholder rights being distributed or becoming separated from shares of Common Stock or other shares of the capital stock of the Issuer pursuant to a shareholder rights plan or arrangement directed against hostile takeovers that provides upon the occurrence of certain events for distribution of preferred stock, warrants, debt instruments or stock rights at a price below their market value, as determined by the Calculation Agent, provided that any adjustment effected as a result of such an event shall be readjusted upon any redemption of such rights; or

(vii) any other event that may have a diluting or concentrative effect on the theoretical value of the shares of Common Stock or an effect on the theoretical value of options on the Common Stock.

#### 4.8 Consequences of Certain Events

(a) With respect to the following events, the definition and procedures of the Equity Definitions shall apply, *mutatis mutandis*, as specified:

(i) In the event of a Share-for-Share Merger Event, Alternative Obligation shall apply; provided, that notwithstanding the Equity Definitions, the Calculation Agent will determine in good faith if the relevant Merger Event affects the theoretical value of the Common Stock or the Preferred Stock and, if so, may in its reasonable discretion make the adjustments set forth in paragraph (A) under the definition of “Modified Calculation Agent Adjustment” in Section 12.2(e) of the Equity Definitions to the terms of the Preferred Stock to reflect the characteristics (including without limitation, the volatility, dividend practice and policy and liquidity) of the Common Stock.

(ii) In the event of a Share-for-Other Merger Event, Cancellation and Payment shall apply.

(iii) In the event of a Share-for-Combined Merger Event, Component Adjustment shall apply.

(iv) In the event of a Share-for Share Tender Offer, Share-for-Other Tender Offer or Share-for-Combined Tender Offer, Modified Calculation Agent Adjustment shall apply.

(v) In the event of a Nationalization, Insolvency or Delisting, Cancellation and Payment shall apply.

(b) For purposes of applying the definitions and procedures specified in Section 4.8(a), capitalized terms used in Section 4.8(a) and not otherwise defined shall have the

meanings specified in the Equity Definitions, and the following terms used in the Equity Definitions shall have the following meanings for such purposes:

<u>Equity Definitions Term</u>	<u>Meaning for Purposes of this Section 4.8</u>
Shares	shares of Common Stock
Transaction	the Preferred Stock
Final Valuation Date	August 11, 2015

(c) If Cancellation and Payment shall apply, then, for purposes of applying the related definitions and procedures specified in Section 4.8(a), the Preferred Stock shall be deemed to be a Share Forward Transaction, the Holder shall be deemed to be the Determining Party, and Section 12.7(c) of the Equity Definitions shall be deemed to be replaced in its entirety with the following:

“The Issuer shall pay to the Holder of each share of Preferred Stock, in satisfaction of the Issuer’s obligation to pay the Liquidation Preference, the Cancellation Amount, in cash, subject to compliance with Section 4.07 of the Notes Indenture and Section 6.05 of the Credit Agreement.”

(d) The provisions of this Section 4.8 shall be in addition to, and not to the exclusion of, any other rights that a Holder may have under this Certificate of Designations or otherwise.

#### 4.9 Further Adjustment Provisions

(a) There shall be no adjustment of the Conversion Price:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on Capital Stock of the Issuer and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director, officer or consultant benefit plan or program of or assumed by the Issuer or any Subsidiaries;

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in subsection (ii) and outstanding as of the date the Preferred Stock was first issued;

(iv) for a change in the par value of the Common Stock;

(v) for any repurchase by the Issuer or any of its Subsidiaries of shares of Common Stock at the then current market price of the Common Stock;

(vi) for any Potential Adjustment Event that will have an aggregate effect on the Preferred Stock (when aggregated with the effect of any other Potential Adjustment Event in respect of which no adjustment of the Conversion Price was made pursuant to this clause) that does not exceed \$250,000;

(vii) for accumulated and unpaid dividends on the Preferred Stock or the Issuer's Existing Preferred Stock; or

(viii) for any event in which the Holders of Preferred Stock will otherwise participate in such event without conversion solely as a Holder of Preferred Stock.

(b) To the extent that any shareholder rights plan is adopted by the Issuer, upon conversion of shares of Preferred Stock into shares of Common Stock, a Holder will receive, in addition to shares of Common Stock, the rights under such rights plan, unless the rights have separated from shares of Common Stock at the time of conversion, in which case the Conversion Price will be adjusted in accordance with Section 4.7.

(c) The Issuer may, from time to time, decrease the Conversion Price if the Board of Directors has made a determination that this decrease would be in the best interests of the Issuer. Any such determination by the Board of Directors will be conclusive. In addition, the Issuer may decrease the Conversion Price if the Board of Directors deems it advisable to avoid or diminish any income tax to Holders of Common Stock resulting from any stock or rights distribution.

## **5. Fundamental Changes**

### **5.1 Repurchase Right**

(a) (i) If there shall occur a Fundamental Change, shares of Preferred Stock shall be purchased by the Issuer at the option of Holders thereof no later than five Business Days after delivery of the Fundamental Change Purchase Notice referred to in Section 5.3 (the "Fundamental Change Purchase Date"), subject to satisfaction by or on behalf of any Holder of the requirements set forth in Section 5.3. The purchase price shall be paid in cash at a price equal to 100% of the Liquidation Preference of the Preferred Stock to be purchased, together with accumulated and unpaid dividends to, but excluding, the Fundamental Change Purchase Date (collectively, the "Fundamental Change Purchase Price").

(b) Notwithstanding the foregoing, Holders of Preferred Stock shall not have the right to require the Issuer to repurchase shares of Preferred Stock upon a Fundamental Change (i) unless such purchase complies with Section 4.07 of the Indenture dated December 23, 2003, between the Issuer and Law Debenture Trust Company of New York governing the Issuer's 8% Second Priority Secured Notes due 2013, as amended or supplemented (the "Notes Indenture"), and Section 6.05 of the Credit Agreement, dated December 23, 2003, by and among the Issuer, NRG Power Marketing Inc., the Lenders party thereto and Credit Suisse First Boston, as such Credit Agreement may be amended, restated, modified, refinanced, replaced or otherwise supplemented from time to time (the "Credit Agreement") and (ii) unless and until the Board of



Directors has approved such Fundamental Change or elected to take a neutral position with respect to such Fundamental Change.

#### 5.2 Notice to Holders

(a) Upon the occurrence of a Fundamental Change, the Issuer shall mail a written notice of the Fundamental Change to each Holder of Preferred Stock, issue a press release containing such notice and publish such notice on its website on the World Wide Web. The notice shall include the form of a Fundamental Change Purchase Notice to be completed by the Holder and shall state, among other things:

- (i) The date of such Fundamental Change and, briefly, the events causing such Fundamental Change;
- (ii) the Fundamental Change purchase price;
- (iii) the Fundamental Change Purchase Date;
- (iv) the name and address of the Transfer Agent;
- (v) the Conversion Price and any adjustments thereto;

(vi) that the Preferred Stock as to which a Fundamental Change Purchase Notice has been given may be converted into Common Stock pursuant to this Certificate of Designations only to the extent that the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Certificate of Designations; and

- (vii) the procedures that a Holder of the Preferred Stock must follow to exercise rights under this Article 5.

#### 5.3 Conditions to Purchase

(a) A Holder of shares of Preferred Stock may exercise its rights specified in Section 5.1 upon delivery of a written notice (which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form) of the exercise of such rights (a "Fundamental Change Purchase Notice") to the Transfer Agent at any time within 90 days following the occurrence of a Fundamental Change. The Fundamental Change Purchase Notice shall state, among other things:

- (i) the Preferred Stock certificate numbers;
- (ii) the number of shares of Preferred Stock to be purchased; and

(iii) that the Issuer shall purchase such Preferred Stock pursuant to the applicable provisions of the Preferred Stock and this Certificate of Designations.

(b) The delivery of such share of Preferred Stock to be purchased (together with all necessary endorsements) to the Transfer Agent at the office of such Transfer Agent shall be a condition to the receipt by the Holder of the Fundamental Change purchase price.

(c) Any purchase by the Issuer contemplated pursuant to the provisions of this Section 5.3 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Purchase Date and the time of delivery of such share of Preferred Stock to the Transfer Agent in accordance with this Section 5.3.

#### 5.4 Withdrawal of Fundamental Change Purchase Notice

(a) Notwithstanding anything herein to the contrary, any Holder of Preferred Stock delivering to the Transfer Agent the Fundamental Change Purchase Notice shall have the right to withdraw such Fundamental Change Purchase Notice in whole or as to a portion thereof at any time prior to the close of business on the Business Day before the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Transfer Agent in accordance with this Section 5.4. The Transfer Agent shall promptly notify the Issuer of the receipt by it of any Fundamental Change Purchase Notice or written withdrawal thereof. The written withdrawal shall specify, among other things:

(i) the certificate numbers for the shares of Preferred Stock in respect of which such notice of withdrawal is being submitted;

(ii) the number of shares of Preferred Stock with respect to which such notice of withdrawal is being submitted; and

(iii) the number of shares of Preferred Stock, if any, that remain subject to the original Fundamental Change Purchase Notice and have been or will be delivered for purchase by the Issuer.

(b) The Transfer Agent will promptly return to the respective Holders thereof any shares of Preferred Stock with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Certificate of Designations, in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

#### 5.5 Effect of Fundamental Change Purchase Notice

Upon the receipt by the Transfer Agent of the Fundamental Change Purchase Notice, the Holder of the shares of Preferred Stock in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn) thereafter be entitled to receive the Fundamental Change Purchase Price with respect to such shares of Preferred Stock, subject to Section 5.3. Such Fundamental Change Purchase Price shall be paid to such Holder promptly following the later of (a) the Fundamental Change Purchase Date with respect to such shares of Preferred Stock and (b) the time of delivery of such shares of Preferred Stock to the Transfer Agent by the Holder thereof in the manner required by this Article 5. Shares of Preferred Stock in respect of which a Fundamental Change Purchase

Notice has been given by the Holder thereof may not be converted into Common Stock on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in Section 5.4.

#### 5.6 Deposit of Purchase Price

On the Business Day immediately following the Fundamental Change Purchase Date, the Issuer shall deposit with the Transfer Agent an amount of cash (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Purchase Price of all shares of Preferred Stock or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. The manner in which the deposit required by this Section 5.6 is made by the Issuer shall be at the option of the Issuer; provided, however, that such deposit shall be made in a manner such that the Transfer Agent shall have immediately available funds on the date of deposit. If the Transfer Agent holds cash sufficient to pay the Fundamental Change Purchase Price of any share of Preferred Stock for which a Fundamental Change Purchase Notice has been tendered and not withdrawn in accordance with this Certificate of Designations on the Business Day following the Fundamental Change Purchase Date then, effective immediately after such Fundamental Change Purchase Date (regardless of whether or not delivery of such shares of Preferred Stock to the Transfer Agent by the Holder thereof in the manner required by this Article 5 is made), such shares of Preferred Stock will cease to be outstanding, dividends will cease to accumulate and all other rights of the Holder shall terminate (other than the right to receive the Fundamental Change Purchase Price as aforesaid).

#### 5.7 Preferred Stock Purchased in Part

Upon surrender of the certificate or certificates representing shares of Preferred Stock that is or are purchased in part, the Issuer shall execute and the Transfer Agent shall authenticate and deliver to the Holder, a new certificate or certificates representing shares of the Preferred Stock in an amount equal to the unpurchased portion of the shares of Preferred Stock surrendered for partial purchase.

#### 5.8 Repayment to the Issuer

The Transfer Agent shall return to the Issuer any cash that remains unclaimed for two years, subject to applicable unclaimed property law, together with interest, if any, thereon held by them for the payment of the Fundamental Change purchase price; provided, however, that to the extent that the aggregate amount of cash deposited by the Issuer pursuant to this Section 5.8 exceeds the aggregate purchase price of the Preferred Stock or portions thereof that the Issuer is obligated to purchase as of the Fundamental Change Purchase Date, then on the Business Day following the Fundamental Change Purchase Date, the Transfer Agent shall return any such excess to the Issuer. Thereafter, any Holder entitled to payment must look to the Issuer for payment as general creditors, unless an applicable abandoned property law designates another Person.

## **6. Liquidation Preference**

6.1 Upon any voluntary or involuntary liquidation, dissolution or winding up of the Issuer or reduction or decrease in the Capital Stock resulting in a distribution of assets to the Holders of any class or series of the Capital Stock, Holders of the Preferred Stock will be entitled to be paid, out of assets of the Issuer available for distribution, the Liquidation Preference per share plus an amount in cash equal to all accumulated and unpaid dividends thereon to the date fixed for liquidation, dissolution or winding up (including an amount equal to a prorated dividend for the period from the last Dividend Payment Date to the date fixed for liquidation, dissolution or winding up), before any distribution is made on any Junior Stock, including, without limitation, the Common Stock but after any distribution is made on any of the Issuer's indebtedness or Senior Stock.

6.2 If, upon any voluntary liquidation, dissolution or winding up of the Issuer, the amounts payable with respect to the Liquidation Preference of the Preferred Stock and all other Parity Stock are not paid in full, the Holders of the Preferred Stock and the Parity Stock will share pro rata in proportion to the full distribution to which each is entitled.

6.3 After payment of the full amount of the Liquidation Preference to which Holders of shares of the Preferred Stock are entitled (including all accumulated and unpaid dividends to which Holders of the shares of Preferred Stock are entitled), the Holders of shares of the Preferred Stock will have no right or claim to any of the remaining assets of the Issuer.

6.4 Neither the voluntary sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Issuer nor the consolidation, merger or amalgamation of the Issuer with or into one or more entities or the consolidation, merger or amalgamation of one or more entities with or into the Issuer will be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Issuer, unless such sale, conveyance, exchange or transfer shall be in connection with a liquidation, dissolution or winding up of the business of the Issuer.

6.5 Notwithstanding the foregoing, the Issuer is not required to set aside any funds to protect the Liquidation Preference of the shares of Preferred Stock.

## **7. Voting Rights**

7.1 The affirmative vote or consent of the Holders of at least 66 2/3% of the outstanding Preferred Stock (with one vote for each share of Preferred Stock held), voting separately as a class, will be required to issue, or increase the authorized number of, any class of Senior Stock, and amend, alter or repeal the Certificate of Incorporation or this Certificate of Designations, whether by merger, consolidation or otherwise, in a manner that would amend, alter or affect adversely the rights of Holders of Preferred Stock.

7.2 Except as set forth in this Certificate of Designations, the creation, authorization or issuance of any shares of Junior Stock or Parity Stock or an increase or decrease in the amount of authorized Common Stock or Preferred Stock, shall not require the consent of the Holders of the Preferred Stock and shall not be deemed to affect adversely the rights, preferences, privileges or voting rights of Holders of shares of the Preferred Stock.

## **8. Share Payments and Stock Borrow**

### **8.1 Holder Share Payment**

(a) Upon conversion and payment of the Cash Conversion Amount and all accumulated and unpaid dividends and, if applicable, the Net Share Value, by the Issuer, (i) if the Market Price is less than \$39.39 (the "Threshold Price"), the Holder will deliver to the Issuer a number of shares of the Issuer's Common Stock equal in value (determined by the Calculation Agent based on the Market Price) to the product of (x) the Threshold Price minus the Market Price and (y) the Number of Underlying Shares, or, if so elected by the Issuer in accordance with Section 4.1, an equivalent amount in cash, and (ii) if the Market Price is equal to or greater than the Threshold Price, the Holder will not make any such share delivery or cash payment to the Issuer.

(b) The Holder will make a payment in cash in lieu of delivering any fractional shares of Common Stock.

(c) Any such delivery of shares or cash by the Holder shall be made as promptly as practicable after the Conversion Date, but in no event later than five Business Days thereafter.

### **8.2 Stock Borrow Disruption**

During any period that a Holder of shares of Preferred Stock is unable, using commercially reasonable efforts, to borrow (or maintain a borrowing of) shares with respect to the Preferred Stock in an amount necessary to hedge its exposure under the Preferred Stock at a rate equal to or less than 5 times the Expected Borrow Cost (such period, the "Stock Borrow Disruption Period"), the dividend rate will increase as directed by the Calculation Agent in its sole discretion to account for any resulting increased hedging costs during such period; provided, that such increase in the dividend rate shall not cause the aggregate amount of dividends per share of Preferred Stock accumulated during any twelve-month period to increase by more than 1.125% of the Liquidation Preference as compared with the amount thereof that would otherwise have so accumulated. Promptly following the end of any Stock Borrow Disruption Period, as determined by the Calculation Agent, the dividend rate shall reset to 3.625%. The "Expected Borrow Cost" is 0.25% per annum.

## **9. Amendment, Supplement and Waiver**

9.1 Without the consent of any Holder of the Preferred Stock, subject to the requirements of the Delaware General Corporation Law, the Issuer may amend or supplement this Certificate of Designations to cure any ambiguity, defect or inconsistency, to provide for uncertificated Preferred Stock in addition to or in place of certificated Preferred Stock, to provide for the assumption of the Issuer's obligations to Holders of the Preferred Stock in the case of a merger or consolidation, to make any change that would provide any additional rights or benefits to the Holders of the Preferred Stock or that does not adversely affect the legal rights or duties under this Certificate of Designations of any such Holder.

## 10. Certain Definitions

Set forth below are certain defined terms used in this Certificate of Designations.

- 10.1 “Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.
- 10.2 “ASB Agreement” means the Accelerated Share Buyback Agreement between the Issuer and Credit Suisse First Boston Capital LLC, dated August 11, 2005.
- 10.3 “Board of Directors” means the Board of Directors of the Issuer.
- 10.4 “Business Day” means any day other than a Legal Holiday.
- 10.5 “Calculation Agent” means Credit Suisse First Boston LLC.
- 10.6 “Cancellation Amount” is as defined in Section 12.8 of the Equity Definitions.
- 10.7 “Capital Stock” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock or partnership or membership interests, whether common or preferred.
- 10.8 “Cash Conversion Amount” is as defined in Section 4.4.
- 10.9 “Certificate of Incorporation” means the Amended and Restated Certificate of Incorporation of NRG Energy, Inc., as amended from time to time.
- 10.10 “Change of Control” shall have the meaning ascribed to it in the Notes Indenture as in effect on the date hereof.
- 10.11 “Closing Sale Price” means, on any date, the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date for the Common Stock as reported in composite transactions on the Exchange.
- 10.12 “Common Stock” means the Issuer’s authorized \$.01 par value Common Stock.
- 10.13 “Conversion Date” is as defined in Section 4.2.
- 10.14 “Conversion Notice” means written notice from the Holder to the Issuer set forth in the form Certificate attached hereto.
- 10.15 “Conversion Price” means \$59.085, subject to adjustment pursuant to this Certificate of Designations.
- 10.16 “Covenant Limitations” is as defined in Section 12.6.
- 10.17 “Credit Agreement” is as defined in Section 5.1(b).

- 10.18 “CSFB” means Credit Suisse First Boston Capital LLC.
- 10.19 “Delisting” is as defined in Section 12.6(a)(iii) of the Equity Definitions.
- 10.20 “Disrupted Day” means any Scheduled Trading Day on which the Exchange or any Related Exchange fails to open for trading during its regular trading session or on which a Market Disruption Event has occurred.
- 10.21 “Dividend Payment Date” means March 15, June 15, September 15 and December 15 of each year, beginning on December 15, 2005, or if any such date is not a Business Day, on the next succeeding Business Day.
- 10.22 “Dividend Period” means the period beginning on, and including, a Dividend Payment Date and ending on, and excluding, the immediately succeeding Dividend Payment Date.
- 10.23 “Early Closure” means the closure on any Exchange Business Day of the Exchange or any Related Exchange(s) prior to its Scheduled Closing Time.
- 10.24 “Equity Definitions” means the 2002 ISDA Equity Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc.
- 10.25 “Exchange” means the New York Stock Exchange.
- 10.26 “Exchange Act” means the Securities Exchange Act of 1934, as amended.
- 10.27 “Exchange Business Day” means any Scheduled Trading Day on which each Exchange and Related Exchange are open for trading during their respective regular trading sessions, notwithstanding any such Exchange or Related Exchange closing prior to its Scheduled Closing Time.
- 10.28 “Exchange Disruption” means any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general (i) to effect transactions in, or obtain market values for, the Common Stock on the Exchange or (ii) to effect transactions in, or obtain market values for, futures or options contracts relating to the Common Stock on any relevant Related Exchange.
- 10.29 “Existing Preferred Stock” means the Issuer’s existing 4.0% Convertible Perpetual Preferred Stock.
- 10.30 “Expected Borrow Cost” is as defined in Section 8.2.
- 10.31 “Fundamental Change” means any of the following: (a) a Change of Control, (b) a Nationalization, (c) an Insolvency or (d) a Delisting.
- 10.32 “Fundamental Change Purchase Date” is as defined in Section 5.1(a).
- 10.33 “Fundamental Change Purchase Notice” is as defined in Section 5.3(a).

10.34 “Fundamental Change Purchase Price” is as defined in Section 5.1(a).

10.35 “Holder” means a Person in whose name shares of Capital Stock is registered.

10.36 “Issuer” means NRG Energy, Inc., a Delaware corporation.

10.37 “Insolvency” is as defined in Section 12.6(a)(ii) of the Equity Definitions.

10.38 “Issue Price” means \$1,000.

10.39 “Junior Stock” is as defined in Section 3.1(a).

10.40 “Legal Holiday” means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place payment is to be received are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no dividends shall accumulate on such payment for the intervening period.

10.41 “Liquidation Preference” means \$1,000 per share of Preferred Stock.

10.42 “Market Disruption Event” means the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, which in either case the Calculation Agent determines is material, or (iii) an Early Closure.

10.43 “Market Price” means the arithmetic mean of the Closing Sale Price of the Issuer’s Common Stock on each of the 20 consecutive Scheduled Trading Days starting on the date 30 scheduled Exchange Business Days immediately prior to the Conversion Date; provided, that if any such Scheduled Trading Day is a Disrupted Day, then the “Modified Postponement” procedures of Section 6.7(c) of the Equity Definitions that are applicable to a “Share Transaction” (as defined in the Equity Definitions) shall apply; provided, further, that if a Market Disruption Event occurs on any of those Scheduled Trading Days, notwithstanding anything to the contrary in the preceding proviso, the Calculation Agent may determine that such Scheduled Trading Day is a Disrupted Day only in part, in which case the Calculation Agent shall make adjustments to the number of shares of Common Stock for which such day shall be considered a Scheduled Trading Day for purposes of this calculation and shall designate the next Scheduled Trading Day that is not a Disrupted Day as the relevant day for calculations for the remaining shares of Common Stock, and shall determine any Market Price based on an appropriately weighted average instead of the arithmetic mean of the Closing Sale Prices. The determinations and adjustments of the Calculation Agent will be based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the shares of Common Stock.

10.44 “Maximum Number of Shares” is as defined in Section 4.4.

10.45 “Nationalization” is as defined in Section 12.6(a)(i) of the Equity Definitions.

10.46 “Net Share Amount” is as defined in Section 4.4.



- 10.47 “Net Shares” is as defined in Section 4.4.
- 10.48 “Net Share Value” is as defined in Section 4.4.
- 10.49 “New Preferred” is as defined in Section 12.6.
- 10.50 “Notes Indenture” is as defined in Section 5.1(b).
- 10.51 “Number of Underlying Shares” means 25,387,151 shares of Common Stock.
- 10.52 “Parity Stock” is as defined in Section 3.1(b).
- 10.53 “Person” means any individual, corporation, partnership, joint venture, association, joint-stock issuer, interest, trust or unincorporated organization (including any subdivision or ongoing business of any such entity or substantially all of the assets of any such entity, subdivision or business).
- 10.54 “Potential Adjustment Event” is as defined in Section 4.7(b).
- 10.55 “Preferred Stock” means the Preferred Stock authorized in this Certificate of Designations.
- 10.56 “Related Exchange” means each successor to the Exchange or any substitute exchange or quotation system to which trading in futures or options contracts relating to the Common Stock has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to the futures or options contracts relating to the Common Stock on such temporary or substitute exchange or quotation system as on the original Related Exchange).
- 10.57 “Scheduled Trading Day” means any day on which the Exchange is scheduled to be open for trading for its regular trading session.
- 10.58 “Senior Stock” is as defined in Section 3.1(c).
- 10.59 “Stock Borrow Disruption Period” is as defined in Section 8.2.
- 10.60 “Subsidiary” means, with respect to any person, any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of such person or a combination thereof.
- 10.61 “Threshold Price” is as defined in Section 8.1(a).
- 10.62 “Trading Disruption” means any suspension of or limitation imposed on trading by the Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limited permitted by the Exchange or Related Exchange or otherwise (i) relating to the

Common Stock on the Exchange or (ii) in futures or options contracts relating to the Common Stock on any relevant Related Exchange.

10.63 The "Transfer Agent" shall be as established pursuant to Article 11 hereof.

#### **11. Transfer Agent and Registrar; Transfer Restrictions**

The duly appointed Transfer Agent and registrar for the Preferred Stock shall be Wells Fargo Bank, N.A. The Issuer may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Issuer and the Transfer Agent; provided that the Issuer shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal. For the avoidance of doubt, each of CSFB and any Holder may transfer shares of the Preferred Stock or assign its rights and duties under this Certificate of Designations (i) to its affiliates and (ii) with the consent of the Issuer (which shall not be unreasonably withheld), to unaffiliated third parties. The Transfer Agent and registrar will duly record the transfer of any shares of Preferred Stock.

#### **12. Other Provisions**

12.1 With respect to any notice to a Holder of shares of the Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

12.2 Shares of Preferred Stock issued and reacquired will be retired and canceled promptly after reacquisition thereof and, upon compliance with the applicable requirements of Delaware law, have the status of authorized but unissued shares of preferred stock of the Issuer undesignated as to series and may with any and all other authorized but unissued shares of preferred stock of the Issuer be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Issuer except that any issuance or reissuance of shares of Preferred Stock must be in compliance with this Certificate of Designations.

12.3 No fractional shares of Common Stock or securities representing fractional shares of Common Stock will be issued upon conversion of the Preferred Stock. Any fractional interest in a share of Common Stock resulting from the conversion of the aggregate amount of a Holder's Preferred Stock converted will be paid in cash based on the Closing Sale Price of the Common Stock on the Conversion Date or such later time as the Issuer is legally and contractually able to pay for such fractional shares.

12.4 The shares of Preferred Stock shall be issuable in whole shares.

12.5 All notices periods referred to herein shall commence on the date of the mailing of the applicable notice.

#### 12.6 Exchange Rights Upon Certain Events

In the event that the Issuer is required at any time pursuant to this Certificate of Designations to pay or deliver a cash amount to a Holder in respect of the repurchase of, or in satisfaction of the Issuer's obligation to pay the Liquidation Preference of, Preferred Stock (including, without limitation, upon conversion, upon Cancellation and Payment pursuant to Section 4.8 or upon exercise of a Holder's rights pursuant to Section 5.1), or the Issuer would be so required but for the operation of the phrase beginning "subject to" in Section 4.8(c) or but for the operation of Section 5.1(b) (such phrase and Section, the "Covenant Limitations"), and the Issuer does not so pay or deliver such cash amount at such time as a result of the Covenant Limitations, requirements of applicable law, or otherwise, then, in addition to an without prejudice to any rights that a Holder may have under law, contract or otherwise, upon request of such Holder, the Issuer shall issue new shares of preferred stock (the "New Preferred") in exchange for such Holder's right to receive such cash amount, with a dividend rate and such other terms as may be determined by the Calculation Agent as necessary or advisable to facilitate the sale of the New Preferred so as to provide an aggregate amount of net proceeds to such Holder upon a sale of the New Preferred concurrent with the issue thereof equal to such cash amount, together with accumulated and unpaid dividends to, but excluding, the date upon which such New Preferred is issued and sold.

#### 12.7 Calculation Agent

Whenever the Calculation Agent is required to act or to exercise judgment in any way pursuant to this Certificate of Designations, it will do so in good faith and in a commercially reasonable manner.

IN WITNESS WHEREOF, NRG Energy, Inc. caused this Certificate to be signed this 11th day of August 2005.

NRG ENERGY, INC.

By: /s/ DAVID CRANE  
Name: David Crane  
Title: President and Chief Executive Officer

*250,000 Shares*

*NRG Energy, Inc.*

*3.625% Perpetual Convertible Preferred Stock,  
par value \$0.01 per share*

**STOCK PURCHASE AGREEMENT**

WHEREAS, NRG Energy, Inc., a Delaware corporation (the "Company"), proposes, upon the terms and considerations set forth herein, to issue and sell to Credit Suisse First Boston Capital LLC, as the purchaser (the "Purchaser"), 250,000 shares of its 3.625% Perpetual Convertible Preferred Stock, par value \$0.01 per share (the "Shares"); and

WHEREAS, the Shares will have the terms and provisions contained in the Certificate of Designations to be filed with the Delaware Secretary of State as of the date hereof (the "Certificate of Designations"); and

WHEREAS, the Shares will be convertible into cash and shares of NRG's par value \$.01 Common Stock (the "Common Stock") in accordance with the Certificate of Designations; and

WHEREAS, the Shares will be offered and sold to the Purchaser without registration under the Securities Act of 1933, as amended (the "Act"), in reliance on an exemption pursuant to Section 4(2) under the Act;

NOW, THEREFORE, this Stock Purchase Agreement (this "Agreement"), dated as of August 10, 2005, is entered into to confirm the agreement concerning the purchase of the Shares by the Purchaser from the Company.

1. *Representations, Warranties and Agreements of the Company.* The Company represents, warrants and agrees, as of the date hereof and as of the Closing Date (as defined below), as follows:

(a) The Company's Annual Report on Form 10-K most recently filed with the Securities and Exchange Commission (the "Commission") and all subsequent reports (collectively, the "Exchange Act Reports") which have been filed by the Company with the Commission or sent to stockholders pursuant to the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), do not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Such documents, when they were filed with the Commission, conformed in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder.

(b) When the Shares are issued and delivered pursuant to this Agreement, such Shares will not be of the same class (within the meaning of Rule 144A under the Act) as securities of the Company that are listed on a national securities exchange registered under Section 6 of the Exchange Act or that are quoted in a United States automated inter-dealer quotation system.

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(c) Neither the Company nor any of its subsidiaries is, nor after giving effect to the sale of the Shares and upon application of the proceeds thereof will be, an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(d) The purchase of the Shares pursuant hereto is exempt from the registration requirements of the Act. No form of general solicitation or general advertising within the meaning of Regulation D (including, but not limited to, advertisements, articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising) was used by the Company or any of its representatives in connection with the sale of the Shares.

(e) The Company and each of its subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization, are duly qualified to do business and are in good standing as foreign corporations in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification (except such failures to qualify as are not, either individually or in the aggregate, material to the Company and its subsidiaries taken as a whole), and have all power and authority necessary to own or hold their respective properties and to conduct the businesses in which they are engaged.

(f) The Company has the capitalization as set forth in the Exchange Act Reports, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; and, except as disclosed in the Exchange Act Reports, all of the issued shares of capital stock of each subsidiary of the Company have been duly and validly authorized and issued and are fully paid and non-assessable and (except (i) for directors' qualifying shares or foreign national qualifying capital stock, and (ii) as pledged to secure indebtedness of the Company and/or its subsidiaries pursuant to credit facilities, indentures and other instruments evidencing indebtedness as set forth in the Exchange Act Reports and existing on the date hereof) are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims.

(g) The Company has all requisite corporate power and authority to issue and sell the Shares. The Shares have been duly authorized by the Company and, when issued and upon delivery to the Purchaser against payment therefor in accordance with the terms hereof, will be validly issued, fully paid and nonassessable, and will not be subject to any preemptive or similar rights.

(h) The Company has all requisite corporate power and authority to enter into this Agreement and the Credit Agreement Amendment (as defined below). This Agreement has been duly authorized, executed and delivered by the Company and is the legally valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(i) The issue and sale of the Shares, the compliance by the Company with all of the provisions of the Certificate of Designations, the First Amendment, dated as of August 5, 2005 (the "Credit Agreement Amendment"), to the Credit Agreement, dated as of December 23, 2003, as amended and restated as of December 24, 2004, by and among the Company, NRG Power Marketing, Inc., and the lenders party thereto (as further amended by the Credit Agreement Amendment, the "Credit Agreement"), and this Agreement and the consummation of the transactions contemplated hereby and thereby (i) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its

subsidiaries is subject, (ii) will not result in any violation of the provisions of the charter, by-laws or applicable organizational documents of the Company or any of its subsidiaries or (iii) will not violate any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties or assets; and no consent, approval, authorization or order of, or filing, registration or qualification with any such court or governmental agency or body is required for the issue and sale of the Shares, the consummation by the Company of the transactions contemplated by this Agreement, the Certificate of Designations or the Credit Agreement Amendment, except (x) in the cases of clauses (i) and (ii) only, for such defaults, violations and failures as would not reasonably be expected to have, either individually or in the aggregate, a material adverse change, or any development involving a prospective material adverse change, in or affecting the management, condition, financial or otherwise, stockholders' equity, results of operations, business or prospects of the Company and its subsidiaries, taken as a whole (a "Material Adverse Effect"); (y) such consent, approvals, authorizations, orders, filings, registrations or qualifications that have been obtained or where failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and (z) such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase of the Shares by the Purchaser.

(j) Except as disclosed in the Exchange Act Reports, there are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Act with respect to any securities of the Company (other than the registration rights agreements relating to the Company's 8% Second Priority Senior Secured Notes due 2013 (the "Secured Notes") and the Company's outstanding 4.0% Perpetual Convertible Preferred Stock) owned or to be owned by such person or to require the Company to include such securities in the securities being registered pursuant to any registration statement filed by the Company under the Act.

(k) During the six-month period preceding the date of this Agreement, none of the Company or any other person acting on behalf of the Company has offered or sold to any person any Shares, or any securities of the same or a similar class as the Shares, other than Shares sold to the Purchaser hereunder. The Company will take reasonable precautions designed to insure that any offer or sale, direct or indirect, in the United States or to any U.S. person (as defined in Rule 902 under the Act), of any Shares or any substantially similar security issued by the Company, within six months subsequent to the Closing Date, is made under restrictions and other circumstances reasonably designed not to affect the status of the sale of the Shares to the Purchaser contemplated by this Agreement as a transaction exempt from the registration provisions of the Act; including any sales pursuant to Rule 144A under, or Regulations D or S of, the Act.

(l) Except as disclosed in the Exchange Act Reports, neither the Company nor any of its subsidiaries has sustained, since the date of the latest audited financial statements included in the Exchange Act Reports, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since such date, there has not been any change in the stockholders' equity or long-term debt of the Company or any of its subsidiaries or Material Adverse Effect.

(m) The financial statements (including the related notes and supporting schedules) included in the Exchange Act Reports present fairly the financial condition and results of operations of the entities purported to be shown thereby, at the dates and for the periods indicated, and have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods involved.

(n) Each of KPMG LLP and PricewaterhouseCoopers LLP, each of whom has certified certain financial statements of the Company and whose report appears in the Exchange Act Reports, was an independent registered public accounting firm with respect to the Company within the meaning of the Securities Act and the applicable rules and regulations thereunder adopted by the Commission and the Public Company Accounting Oversight Board during the periods covered by the financial statements on which they reported contained in the Exchange Act Reports.

(o) Except as disclosed in the Exchange Act Reports, the Company and each of its subsidiaries has good and marketable title in fee simple to all real property and good and marketable title to all personal property owned by them, in each case free and clear of all liens, encumbrances and defects, except as do not materially affect the value of the property of the Company and its subsidiaries taken as a whole and do not materially interfere with the use made and proposed to be made of such property by the Company or any of its subsidiaries; and all real property and buildings held under lease by the Company or any of its subsidiaries are held by them under valid, subsisting and enforceable leases, with such exceptions as are not material and do not interfere with the use made and proposed to be made of such property and buildings by the Company or any of its subsidiaries.

(p) Except as disclosed in the Exchange Act Reports, the Company and each of its subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is adequate for the conduct of their respective businesses and the value of their respective properties and as is customary for companies engaged in similar businesses in similar industries, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(q) Except as disclosed in the Exchange Act Reports, the Company and each of its subsidiaries (i) own or possess adequate rights to use all material patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, copyrights and licenses necessary for the conduct of their respective businesses and (ii) have no reason to believe that the conduct of their respective businesses will conflict with, and have not received any notice of any claim of conflict with, any such rights of others, except with respect to clause (ii) as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(r) Except as disclosed in the Exchange Act Reports, there are no legal or governmental proceedings pending to which the Company or any of its subsidiaries is a party or of which any property or assets of the Company or any of its subsidiaries is the subject that, if determined adversely to the Company or any of its subsidiaries, could have a Material Adverse Effect, and to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(s) No relationship, direct or indirect, that would be required to be described in a Company's registration statement pursuant to Item 404 of Regulation S-K, exists between or among the Company on the one hand, and the (i) directors or officers, (ii) nominees for directors, (iii) stockholders owning of record or beneficially owning more than 5% of any class of the Company's voting securities, or (iv) any immediate family member of any of the foregoing, of the Company, on the other hand, that has not been described in the Exchange Act Reports.

(t) No labor disturbance by the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company or any of its subsidiaries, is imminent that could be expected to have a Material Adverse Effect.



(u) The Company is in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“ERISA”); no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company would have any liability; the Company has not incurred and does not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the “Code”); and each “pension plan” for which the Company would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(v) Except as disclosed in the Exchange Act Reports, the Company has filed all federal, state and local income and franchise tax returns required to be filed through the date hereof and has paid all taxes due thereon (except where any payment is being contested in good faith), and no tax deficiency has been determined adversely to the Company or any of its subsidiaries that has had (nor does the Company have any knowledge of any tax deficiency that, if determined adversely to the Company or any of its subsidiaries, might have) or could reasonably be expected to have a Material Adverse Effect.

(w) Except as disclosed in the Exchange Act Reports, since December 31, 2004 through the date hereof, the Company has not (i) issued or granted any securities (other than the Secured Notes and registered notes offered in exchange therefor), (ii) incurred any liability or obligation, direct or contingent, other than liabilities and obligations that were incurred in the ordinary course of business, (iii) entered into any transaction not in the ordinary course of business or (iv) declared or paid any dividend on its capital stock.

(x) Except as disclosed in the Exchange Act Reports, the Company (i) makes and keeps accurate books and records and (ii) maintains internal accounting controls that provide reasonable assurance that (A) transactions are executed in accordance with management’s authorization, (B) transactions are recorded as necessary to permit preparation of its financial statements and to maintain accountability for its assets, (C) access to its assets is permitted only in accordance with management’s authorization and (D) the reported accountability for its assets is compared with existing assets at reasonable intervals.

(y) Except as disclosed in the Exchange Act Reports, neither the Company nor any of its subsidiaries (i) is in violation of its charter, by-laws or applicable organizational documents, (ii) is in default in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant, condition or other obligation contained in any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which it is a party or by which it is bound or to which any of its properties or assets is subject or (iii) is in violation in any material respect of any law, ordinance, governmental rule, regulation or court decree to which it or its property or assets may be subject or has failed to obtain or maintain any material license, permit, certificate, franchise or other governmental authorization or permit necessary to the ownership of its property or to the conduct of its business.

(z) Neither the Company nor any of its subsidiaries, nor, to the Company’s knowledge, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries, has used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; violated or is

in violation of any provision of the Foreign Corrupt Practices Act of 1977; or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment.

(aa) Except as disclosed in the Exchange Act Reports and except for such matters as would not, individually or in the aggregate, result in a Material Adverse Effect, the Company and any of its subsidiaries (1) are conducting and have conducted their businesses, operations and facilities in compliance with Environmental Laws (as defined below); (2) have duly obtained, possess, maintain in full force and effect, and have fulfilled and performed all of their obligations under any and all permits, licenses or registrations required under Environmental Law (“Environmental Permits”); (3) are not party to, or otherwise bound by, any written contract under which the Company or any of its subsidiaries is obligated by any representation, warranty, indemnification, covenant or restriction to undertake any material liability under Environmental Law or related to the remediation of any Hazardous Substances (as defined below); (4) have not received any written notice from a governmental authority or any other third party alleging any violation of Environmental Law or liability thereunder (including, without limitation, liability as a “potentially responsible party” and/or for costs of investigating or remediating sites containing Hazardous Substances and/or damages to natural resources); (5) are not subject to any pending or, to the knowledge of the Company or any of its subsidiaries, threatened claim or other legal proceeding under any Environmental Laws against the Company or its subsidiaries; and (6) do not have any knowledge of any pending Environmental Law, or any unsatisfied condition in an Environmental Permit, or any release of Hazardous Substances that, individually or in the aggregate, would reasonably be expected to form the basis of any such claim or legal proceeding against the Company or its subsidiaries or to require any material capital expenditures to maintain the Company’s or the subsidiaries’ compliance with Environmental Law or with their Environmental Permits. As used in this paragraph, “Environmental Laws” means any and all applicable federal, state, local, and foreign laws, statutes, ordinances, rules, regulations, enforceable requirements and common law, or any enforceable administrative or judicial interpretation, order, consent, decree or judgment thereof, relating to pollution or the protection of human health or the environment, including, without limitation, those relating to, regulating, or imposing liability or standards of conduct concerning (i) noise or odor; (ii) emissions, discharges, releases or threatened releases of Hazardous Substances into ambient air, surface water, groundwater or land; (iii) the generation, manufacture, processing, distribution, use, treatment, storage, disposal, release, transport or handling of, or exposure to, Hazardous Substances; or (iv) the investigation, remediation or cleanup of any Hazardous Substances. As used in this paragraph, “Hazardous Substances” means pollutants, contaminants or hazardous, dangerous, toxic, biohazardous or infectious substances, materials, constituents or wastes or toxins, petroleum, petroleum products and their breakdown constituents, or any other hazardous or toxic chemical substance regulated under Environmental Laws or exhibiting a hazardous waste characteristic including but not limited to corrosivity, ignitability, toxicity, or reactivity, whether solid, gaseous or liquid in nature.

(bb) None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Shares), will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U and X of the Board of Governors of the Federal Reserve System.

(cc) Prior to the date hereof, neither the Company nor any of its affiliates nor any person acting on its or their behalf (other than the Purchaser, as to whom the Company makes no representation) has taken any action that is designed to or that has constituted or that might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the sale of the Shares.

(dd) Neither the Company nor any “affiliate” of the Company is, or after giving effect to the issuance and sale of the Shares, will become, subject to regulation as (i) a “holding company,” (ii) a

“subsidiary company” of a “holding company” or (iii) a “public-utility company,” in each case as such terms are defined in the Public Utility Holding Company Act of 1935 and the rules and regulations promulgated thereunder, as amended from time to time (“PUHCA”). As of the date hereof, none of the Company or any of the affiliates of the Company shall be a “subsidiary company” of a “holding company,” in each case as such terms are defined in PUHCA.

(ee) Except as described herein, none of the Company or any of the Company’s subsidiaries is subject to regulation as a “public utility” as such term is defined in the Federal Power Act and the rules and regulations promulgated thereunder, as amended from time to time (the “FPA”), other than (i) as a power marketer or an owner of generator leads, which has market-based rate authority under Section 205 of the FPA or (ii) as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act of 1978 and the rules and regulations promulgated thereunder, as amended from time to time (“PURPA”), as contemplated by 18 C.F.R. Section 292.601(c). Each of the Company and any of the Company’s subsidiaries that is subject to regulation as a “public utility” as such term is defined in the FPA has validly issued orders from the Federal Energy Regulatory Commission (“FERC”), not subject to any pending challenge, investigation or proceeding (other than the FERC’s generic proceeding initiated in Docket No. EL01-118-000) (x) authorizing such person to engage in wholesale sales of electricity and, to the extent permitted under its market-based rate tariff, other transactions at market-based rates and (y) granting such waivers and blanket authorizations as are customarily granted to entities with market-based rate authority, including blanket authorizations to issue securities and to assume liabilities pursuant to Section 204 of the FPA, except in each case where the failure to have such orders could not reasonably be expected to have a Material Adverse Effect.

(ff) None of the Company or any of the Company’s subsidiaries (other than subsidiaries regulated as steam utilities or chilled water providers) is subject to any state laws or regulations respecting rates or the financial or organizational regulation of utilities, other than, with respect to those entities that are QF’s, such state regulations contemplated by 18 C.F.R. Section 292.602(c) and “lightened regulation” as defined by the New York State Public Service Commission.

(gg) The Company is subject to Section 13 or 15(d) of the Exchange Act.

(hh) The Company has established and maintains disclosure controls and procedures (as such term is defined in Rule 13a-14 under the Exchange Act), which (i) are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company’s principal executive officer and its principal financial officer by others within those entities, particularly during the periods in which the periodic reports required under the Exchange Act are being prepared; (ii) have been evaluated for effectiveness as of a date within 90 days prior to the date of the Company’s most recent annual or quarterly report; and (iii) are effective in all material respects to perform the functions for which they were established.

(ii) Based on the evaluation of its disclosure controls and procedures, the Company is not aware of (i) any significant deficiency in the design or operation of internal controls which could adversely affect the Company’s ability to record, process, summarize and report financial data or any material weaknesses in internal controls; or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal controls.

(jj) Internal controls are reviewed and revised by the Company’s management on a consistent basis in the ordinary course.

2. *Purchase of the Shares by the Purchaser, Agreements to Sell and Purchase.* The Company agrees, on the basis of the representations, warranties and agreements of the Purchaser

contained herein and subject to all the terms and conditions set forth herein, to issue and sell to the Purchaser and, upon the basis of the representations, warranties and agreements of the Company contained herein and subject to all the terms and conditions set forth herein, the Purchaser agrees, to purchase from the Company, at a purchase price of \$1,000 per share, 250,000 Shares. The Company shall not be obligated to deliver any of the securities to be delivered hereunder except upon payment for all of the securities to be purchased as provided herein.

The Purchaser hereby represents and warrants to, and agrees with, the Company that it is purchasing the Shares pursuant to a private sale exempt from registration under the Act.

The Purchaser understands that the Company and, for purposes of the opinions to be delivered to the Purchaser pursuant to Sections 6(c) and 6(d) hereof, counsel to the Company and counsel to the Purchaser, will rely upon the accuracy and truth of the foregoing representations, warranties and agreements and the Purchaser hereby consents to such reliance.

The Purchaser agrees that if the Company becomes a wholly owned subsidiary of a newly formed holding company that, at that time, does not have other operations or assets, if any action by the Purchaser is required to effect an exchange or conversion of the Purchaser's Shares into substantially identical shares of perpetual convertible preferred stock issued by such holding company, then Purchaser will work with the Company in good faith to effect such exchange or conversion, *provided* that nothing herein shall be deemed to give the Purchaser any voting or objection rights that it would not otherwise have under law.

3. *Delivery of the Shares and Payment Therefor.* Delivery to the Purchaser of and payment for the Shares shall be made at the office of Latham & Watkins LLP, at 9:00 A.M., New York City time, on August 11, 2005 (the "Closing Date"). The place of closing for the Shares and the Closing Date may be varied by agreement between the Purchaser and the Company.

The Shares will be delivered to the Purchaser, against payment by or on behalf of the Purchaser of the purchase price therefor by wire transfer in immediately available funds. The Shares will be evidenced by one or more certificates in definitive form. The Shares to be delivered to the Purchaser shall be made available to the Purchaser in New York City for inspection and packaging not later than 9:30 A.M., New York City time, on the business day next preceding the Closing Date.

4. *Agreements of the Company.* The Company agrees with the Purchaser as follows:

(a) If not otherwise available on the Commission's Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"), so long as any of the Shares are outstanding, the Company will furnish to the Purchaser as soon as practicable after the end of each fiscal year an annual report (including a balance sheet and statements of income, stockholders' equity and cash flows of the Company and its consolidated subsidiaries certified by independent public accountants) and, as soon as practicable after the end of each of the first three quarters of each fiscal year (beginning with the fiscal quarter ending after the date of this Agreement), will make available to the Purchaser consolidated summary financial information of the Company and its subsidiaries for such quarter in reasonable detail.

(b) If not otherwise available on EDGAR, the Company will furnish to the Purchaser (i) as soon as available, a copy of each report of the Company mailed to stockholders generally or filed with any stock exchange or regulatory body and (ii) from time to time such other information concerning the Company as the Purchaser may reasonably request.

(c) The Company will apply the net proceeds from the sale of the Shares to be sold by it hereunder to (i) redeem a portion of the Company's outstanding Secured Notes and (ii) for general corporate purposes.

(d) Except as stated in this Agreement, neither the Company nor any of its affiliates has taken, nor will any of them take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale of the Shares.

(e) During the period of two years after the Closing Date, the Company will not, and will not permit any of its "affiliates" (as defined in Rule 144 under the Act), to, resell any of the Shares that constitute "restricted securities" under Rule 144 that have been reacquired by any of them.

(f) The Company will take such steps as shall be necessary to ensure that neither the Company nor any of the Company's subsidiaries becomes an "investment company" within the meaning of such term under the Investment Company Act of 1940, as amended.

(g) The Company will use all commercially reasonable efforts to do and perform all things required or necessary to be done and performed under this Agreement by it prior to the Closing Date, and to satisfy all conditions precedent to the Purchaser's obligations hereunder to purchase the Shares.

(h) Between the date hereof and the Closing Date, the Company shall not do or authorize any act or thing that would result in an adjustment of the conversion price of the Shares if the Shares had been issued on the date hereof.

(i) Unless and until such time as the Company shall have obtained approval of the New York Stock Exchange for the listing of such number of its authorized but unissued shares of Common Stock as shall be sufficient if necessary to permit the conversion of all outstanding shares of the Preferred Stock into the Maximum Number of Shares (as defined in the Certificate of Designations), all conversions of shares of the Preferred Stock shall be satisfied using shares of Common Stock of the Company held in treasury and, unless and until such approval has been obtained from the New York Stock Exchange, the Company shall reserve at all times a sufficient number of shares of Common Stock in treasury for such conversions. The Company shall have no further obligations under this provision if such approval is obtained from the New York Stock Exchange.

(j) The Company will not incur any debt or otherwise enter into any agreement (including an amendment to an agreement) that would restrict the ability of the Company to make any payments or otherwise provide any consideration with respect to the Shares when and as due under the Certificate of Designations (it being understood that the Company may comply with (i) the indenture governing the Secured Notes, as in effect on the date hereof, and (ii) the Credit Agreement, as it may be amended, restated, modified, refinanced, replaced or otherwise supplemented from time to time, provided that the terms thereof are no more restrictive with respect to this Section 4(j) than the Credit Agreement as in effect on the date hereof with respect ).

5. *Expenses.* Whether or not the transactions contemplated by this Agreement are consummated or this Agreement becomes effective or is terminated, the Company agrees to pay all costs, expenses, fees and taxes incident to and in connection with: (i) the preparation, printing (including, without limitation, word processing and duplication costs) and delivery of this Agreement, the Certificate of Designations and all other agreements, memoranda, correspondence and other documents printed and

delivered in connection therewith; (ii) the issuance and delivery by the Company of the Shares and any taxes payable in connection therewith; (iii) the preparation of certificates for the Shares (including, without limitation, printing and engraving thereof); and (iv) the performance by the Company of its other obligations under this Agreement. Notwithstanding the foregoing, the aggregate amount of all reasonable fees and disbursements of Latham & Watkins LLP in connection with the transactions contemplated under this Agreement shall be paid by the Purchaser.

6. *Conditions to Purchaser's Obligations.* The obligations of the Purchaser hereunder are subject to the accuracy, when made and on and as of the Closing Date, of the representations and warranties of the Company contained herein, to the performance by the Company of its obligations hereunder, and to each of the following additional terms and conditions:

(a) The Purchaser shall not have discovered and disclosed to the Company on or prior to the Closing Date that the Exchange Act Reports contain an untrue statement of a fact that, in the opinion of the Purchaser or Latham & Watkins LLP, is material, or omit to state a fact that, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) All corporate proceedings and other legal matters incident to the authorization, form and validity of this Agreement, the Shares, the Certificate of Designations, the Credit Agreement Amendment, and all other legal matters relating to this Agreement and the transactions contemplated hereby and thereby shall be reasonably satisfactory in all material respects to counsel for the Purchaser, and the Company shall have furnished to such counsel all documents and information that they may reasonably request to enable them to pass upon such matters.

(c) Kirkland & Ellis LLP and General Counsel for the Company shall have furnished to the Purchaser their written opinions, addressed to the Purchaser and dated the Closing Date, in form and substance reasonably satisfactory to the Purchaser and substantially in the form of Exhibit A hereto.

(d) The Purchaser shall have received from Latham & Watkins LLP, counsel for the Purchaser, such opinion or opinions, dated the Closing Date, with respect to the issuance and sale of the Shares and other related matters as the Purchaser may reasonably require, and the Company shall have furnished to such counsel such documents and information as they reasonably request for the purpose of enabling them to pass upon such matters.

(e) Neither the Company nor any of its subsidiaries shall have sustained, since the date of the latest audited financial statements included in the Exchange Act Reports, any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree; and, since such date, there shall not have been any change in the stockholders' equity or long-term debt of the Company or any of its subsidiaries or material adverse change, or any development involving a prospective material adverse change, in or affecting the management, condition, financial or otherwise, stockholders' equity, results of operations, business or prospects of the Company and its subsidiaries, taken as a whole.

(f) The Company shall have furnished or caused to be furnished to the Purchaser on the Closing Date certificates of officers of the Company satisfactory to the Purchaser as to the accuracy of the representations and warranties of the Company herein at and as of the Closing Date, as to the performance by the Company of all of its obligations hereunder to be performed at or prior to the Closing Date and as to such other matters as the Purchaser may reasonably request.

(g) No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any governmental agency or body which would, as of the Closing Date, prevent the issuance or sale of the Shares; and no injunction, restraining order or order of any other nature by any federal or state court of competent jurisdiction shall have been issued as of the Closing Date which would prevent the issuance or sale of the Shares.

(h) The Company shall have filed the Certificate of Designations with the Delaware Secretary of State, in the form and substance previously agreed, and executed and delivered the Credit Agreement Amendment, and such other documents as the Purchaser may reasonably require, and the Purchaser shall have received original copies thereof, duly executed by the Company.

All opinions, letters, evidence and certificates mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Purchaser.

*7. Indemnification.*

(a) The Company will indemnify and hold harmless the Purchaser, its partners, directors and officers and each person, if any, who controls the Purchaser within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities, joint or several, to which the Purchaser may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in the Exchange Act Reports, or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (ii) the breach of any representation, warranty or covenant contained in this Agreement, and in each case, will reimburse the Purchaser for any legal or other expenses reasonably incurred by the Purchaser in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred.

(b) The obligations of the Company under this Section 7 shall be in addition to any liability which the Company may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Purchaser within the meaning of the Securities Act or the Exchange Act; and the obligations of the Purchaser under this Section 7 shall be in addition to any liability which the Purchaser may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Company within the meaning of the Securities Act or the Exchange Act.

*8. Termination.* The obligations of the Purchaser hereunder may be terminated by the Purchaser by notice given to and received by the Company prior to delivery of and payment for the Shares if, prior to that time, any of the events described in Section 6(e) shall have occurred or if the Purchaser shall decline to purchase the Shares for any reason permitted under this Agreement.

*9. Reimbursement of Purchaser's Expenses.* If the Company fails to tender the Shares for delivery to the Purchaser by reason of any failure, refusal or inability on the part of the Company to perform any agreement on its part to be performed, or because any other condition of the obligations hereunder required to be fulfilled by the Company is not fulfilled, the Company shall reimburse the Purchaser for all reasonable out-of-pocket expenses (including fees and disbursements of counsel) incurred by the Purchaser in connection with this Agreement and the proposed purchase of the Shares, and upon demand the Company shall pay the full amount thereof to the Purchaser.

10. *Notices, etc.* All statements, requests, notices and agreements hereunder shall be in writing, and:

(a) if to the Purchaser, shall be delivered or sent by hand delivery, mail, telex, overnight courier or facsimile transmission to Credit Suisse First Boston Capital LLC, Eleven Madison Avenue, New York, New York 10010-3629, Attention: Transactions Advisory Group, with a copy to Latham & Watkins LLP, 885 Third Avenue, Suite 1000, New York, New York 10022, Attention: Kirk A. Davenport, Esq. (Fax: (212) 751-4864);

(b) if to the Company, shall be delivered or sent by mail, telex, overnight courier or facsimile transmission to NRG Energy, Inc., 211 Carnegie Center, Princeton, New Jersey 08540, Attention: General Counsel (Fax: (609) 524-4589), with a copy to Kirkland & Ellis LLP, 200 East Randolph Drive, Chicago, Illinois 60601, Attention: Gerald T. Nowak, Esq. (Fax: (312) 861-2200);

Any such statements, requests, notices or agreements shall take effect at the time delivered by hand, if personally delivered; two business days after being deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt is acknowledged, if telecopied; and on the next business day, if timely delivered to an air courier guaranteeing overnight delivery.

11. *Persons Entitled to Benefit of Agreement.* This Agreement shall inure to the benefit of and be binding upon the Purchaser, the Company and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those persons, except that the representations, warranties, indemnities and agreements of the Company contained in this Agreement shall also be deemed to be for the benefit of directors of the Purchaser, officers of the Purchaser and any person or persons controlling the Purchaser within the meaning of Section 15 of the Act. Nothing in this Agreement is intended or shall be construed to give any person, other than the persons referred to in this Section 11, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

12. *Survival.* The respective indemnities, representations, warranties and agreements of the Company and the Purchaser contained in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall survive the delivery of and payment for the Shares and shall remain in full force and effect, regardless of any investigation made by or on behalf of any of them or any person controlling any of them.

13. *Definition of the Terms "Business Day" and "Subsidiary."* For purposes of this Agreement, (a) "business day" means any day on which the New York Stock Exchange, Inc. is open for trading and (b) "subsidiary" has the meaning set forth in Rule 405 of the Rules and Regulations.

14. *Governing Law.* **This Agreement shall be governed by and construed in accordance with the laws of New York.**

15. *Counterparts.* This Agreement may be executed in one or more counterparts and, if executed in more than one counterpart, the executed counterparts shall each be deemed to be an original but all such counterparts shall together constitute one and the same instrument.

16. *Headings.* The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.



This Agreement is agreed to as of the date first written above.

PURCHASER:

Credit Suisse First Boston Capital LLC

By /s/ JOHN RYAN

Name: John Ryan

Title: Assistant Vice President Operations

COMPANY:

NRG Energy, Inc.

By /s/ ROBERT C. FLEXON

Name: Robert C. Flexon

Title: Chief Financial Officer

**Opinions with respect to Corporate Matters**

**[Kirkland & Ellis LLP and General Counsel opinions attached]**

## ACCELERATED SHARE REPURCHASE AGREEMENT

August 11, 2005

NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540

Credit Suisse First Boston Capital LLC  
Eleven Madison Avenue  
New York, NY 10010

External ID: \_\_\_\_\_ – Risk ID: \_\_\_\_\_

THIS AGREEMENT (this “**Agreement**”) is made as of this 11<sup>th</sup> day of August, 2005, among CREDIT SUISSE FIRST BOSTON CAPITAL LLC (“**Seller**”), NRG Energy, Inc., a Delaware corporation (Symbol: “**NRG**”) (“**Buyer**”), and CREDIT SUISSE FIRST BOSTON LLC, as agent (in such capacity, the “**Agent**”) hereunder.

WHEREAS, Buyer wishes to purchase, and Seller wishes to sell, shares of common stock, par value U.S. \$ 0.01 per share, of Buyer (including any security entitlements in respect thereof, “**Shares**”) on the terms set forth herein (the “**Transaction**”);

WHEREAS, certain terms used herein have the meanings set forth in Article 3;

NOW, THEREFORE, in consideration of their mutual covenants herein contained, the parties hereto, intending to be legally bound, hereby mutually covenant and agree as follows:

ARTICLE 1  
Sale and Purchase

Sale and Purchase:

On the Trade Date, Seller will deliver to Buyer a number of Shares (the “**Purchased Shares**”) equal to 6,346,788 (the “**Number of Shares**”) and Buyer will pay Seller cash in immediately available funds in an amount equal to USD 250,000,000 (the product of USD 39.39 per Share (the “**Initial Price**”) and the Number of Shares) on a delivery-versus-payment basis.

ARTICLE 2  
Purchase Price Adjustment

Buyer Delivery:

If Buyer has not elected Cash Settlement in accordance with the provisions opposite “**Settlement Method**” below, Buyer will deliver to Seller on the Settlement Date a number of Shares equal to 100.7% of the Final Settlement Amount if the Final Settlement Amount is positive; *provided* that Buyer shall

not be required to deliver more than the Maximum Deliverable Number of Shares.

Buyer Payment:	If Buyer has elected Cash Settlement in accordance with the provisions opposite "Settlement Method" below and the Final Settlement Amount is positive, Buyer will pay to Seller on the Cash Settlement Date an amount in cash equal to the product of (x) the Final Settlement Amount and (y) the Cash Settlement Price.
Seller Delivery:	If Buyer has not elected Cash Settlement in accordance with the provisions opposite "Settlement Method" below, Seller will deliver to Buyer on the Settlement Date a number of shares equal to the absolute value of the Final Settlement Amount if the Final Settlement Amount is negative.
Seller Payment:	If Buyer has elected Cash Settlement in accordance with the provisions opposite "Settlement Method" below and the Final Settlement Amount is negative, Seller will pay to Buyer on the Cash Settlement Date an amount in cash equal to the product of (x) the absolute value of the Final Settlement Amount and (y) the Cash Settlement Price.
Settlement Method:	Buyer or Seller shall make the Buyer Delivery or Seller Delivery, as the case may be, pursuant to Article 2 on the Settlement Date unless Buyer has notified Seller no later than the 5 <sup>th</sup> Scheduled Trading Day immediately preceding the Scheduled Final Valuation Date that "Cash Settlement" shall apply, in which case Buyer shall be deemed to have represented to Seller that Buyer is not aware of any material non-public information regarding Buyer or the Shares at the time of such notice, and which notice shall be irrevocable.

### ARTICLE 3

#### Certain Terms and Definitions

Section 3.01. As used herein, the following words and phrases shall have the following meanings:

Trade Date:	August 11, 2005
Settlement Date:	The date that immediately follows the last Valuation Date by 3 Clearance System Business Days.
Clearance System Business Day:	Any day on which the Clearance System is open (or, but for an event beyond the control of the parties as a result of which the Clearance System cannot clear the transfer of the Shares, would have been open) for the acceptance and execution of settlement instructions.
Clearance System:	The Depository Trust Company, New York, New York, and any successor thereto.
Final Settlement Amount:	The sum of all Daily Net Share Amounts for all Valuation Dates.

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Valuation Dates:	Each of the Scheduled Trading Days commencing on the Trade Date to and including the date on which the sum of all Daily Reference Share Amounts for such date and all previous Valuation Dates equals the Number of Shares (which is currently expected, in the absence of suspensions or reductions of the Daily Reference Share Amount, to occur on February 13, 2006 (the "Scheduled Final Valuation Date"))).
Scheduled Trading Day:	Any day on which the Exchange and each Related Exchange are scheduled to be open for their respective regular trading sessions.
Exchange:	New York Stock Exchange
Related Exchange:	Each exchange or quotation system where trading has a material effect (as determined by the Calculation Agent) on the overall market for futures or options contracts relating to the Shares.
Daily Reference Share Amount:	For any Valuation Date, 49,584, except that for the first Valuation Day the Daily Reference Share Amount shall be 49,620.
Daily Net Share Amount:	For any Valuation Date, the quotient obtained by <i>dividing</i> the Daily Difference for such Valuation Date by the Daily Reference Price for such Valuation Date. For the avoidance of doubt, the Daily Net Share Amount may be a positive or negative amount.
Daily Difference:	For any Valuation Date, the product of (i) (A) the Daily Reference Price for such Valuation Date <i>minus</i> (B) the Initial Price, <i>multiplied by</i> (ii) the Daily Reference Share Amount for such Valuation Date. For the avoidance of doubt, the Daily Difference may be a positive or negative amount.
Daily Reference Price:	For any Valuation Date, (i) the VWAP Price on such Valuation Date, or, if such VWAP Price would be greater than the Maximum Price, the Maximum Price, or, if such VWAP Price would be less than the Minimum Price, the Minimum Price, <i>plus</i> (ii) USD 0.03 per Share.
VWAP Price:	For any Valuation Date or Cash Settlement Averaging Date, the volume-weighted average price per Share at which the Shares trade on any exchange on which the Shares are traded on such day, <i>excluding</i> trades (i) that do not settle regular way, (ii) opening trades (regular way) reported in the consolidated system, (iii) trades effected during the 10 minutes before the scheduled close of trading on the Exchange and 10 minutes before the scheduled close of the primary trading session in the market where the trade is effected and (iv) trades on such day that do not satisfy the requirements of Rule 10b-18(b)(3) under the Exchange Act, as determined by the Calculation Agent by reference to Bloomberg Page ["AQR"] (or any successor thereto) for Buyer.

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Maximum Price: USD 40.5717 per Share

Minimum Price: USD 38.2083 per Share

Maximum Deliverable Number: 670,000, subject to adjustment pursuant to Section 7.01.

Valuation Period: The period starting on the first Valuation Date and ending on the last Valuation Date.

Cash Settlement Date: The date that immediately follows the last Cash Settlement Averaging Date by 3 Business Days.

Business Day: Any day that is not a Saturday, a Sunday or a day on which banking institutions or trust companies in The City of New York are authorized or obligated by law or executive order to close.

Cash Settlement Averaging Dates: Each of the 10 Scheduled Trading Days immediately following the Valuation Period.

Cash Settlement Price: With respect to a Buyer Payment, the average of the VWAP Price for each Cash Settlement Averaging Date; and, with respect to a Seller Payment, the average of the "Volume Weighted Average Price" per Share on each Cash Settlement Averaging Date as determined by the Calculation Agent by reference to Bloomberg Page "AQR" (or any successor thereto) for the Buyer with respect to the period from 9:30 a.m. to 4:00 p.m. (New York City time) on each such day.

Cash Settlement Averaging Period: The period starting on the first Cash Settlement Averaging Date and ending on the last Cash Settlement Averaging Date.

Calculation Agent: Credit Suisse First Boston Capital LLC.

Exchange Act: The Securities Exchange Act of 1934, as amended.

Guarantee: The Guarantee, dated May 16, 2001, made by Credit Suisse First Boston Capital (USA), Inc. in favor of each and every Buyer to financial transactions with its wholly-owned subsidiary, Credit Suisse First Boston Capital LLC.

Rule 10b-18: Rule 10b-18 under the Exchange Act.

Securities Act: The Securities Act of 1933, as amended.

Section 3.02. In addition, the following terms shall have the meanings set forth in the Sections indicated below:

<b>"Bankruptcy Code"</b>	Section 8.04
<b>"Hedging Disruption"</b>	Section 7.02(h)
<b>"Regulation M"</b>	Section 5.02(k)

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“Relevant CSFB Personnel”	Section 6.01(e)
“Seller Hedging”	Section 4.01(b)
“Seller Purchases”	Section 4.01(a)
“Termination Amount”	Section 7.02
“Termination Date”	Section 7.02
“Termination Event”	Section 7.02
“Termination Value”	Section 7.02

ARTICLE 4  
Purchases And Hedging by Seller

Section 4.01. *Seller Purchases and Hedging.* (a) The parties acknowledge that the Purchased Shares may be sold short to Buyer and that during the Valuation Period and, if the Final Settlement Amount is positive and Buyer has elected Cash Settlement in accordance with Article 2, during the Cash Settlement Averaging Period, Seller may purchase Shares in connection with the Transaction, which Shares may be used to cover all or a portion of such short sale (any such purchases, collectively, “**Seller Purchases**” (it being understood that such term does not include any purchases made by Seller in connection with hedging of Seller’s exposure to any optionality arising under the Transaction)).

(b) Any Seller Purchases and any other hedging or trading by Seller or its affiliates in connection with the Transaction (“**Seller Hedging**”) will be conducted independently of Buyer. The timing of any Seller Purchases or Seller Hedging, the number of Shares thus purchased or sold on any day, the price paid or received per Share for any Seller Purchases or relating to any Seller Hedging and the manner in which any Seller Purchases are made or Seller Hedging is conducted, including without limitation whether such purchases or transactions are made on any securities exchange or privately, shall be within the sole discretion of Seller.

Section 4.02. *Suspension of Seller Purchases or Seller Hedging.* (a) Without limiting the generality of the foregoing, if at any time Seller determines in good faith and a commercially reasonable manner that (i) any Seller Purchases or Seller Hedging may raise material risks under applicable securities laws, (ii) it is necessary or advisable to limit Seller Purchases or Seller Hedging in light of market conditions or a market disruption at such time or (iii) a Hedging Disruption has occurred, Seller (or its agent or affiliate) may, in its discretion, (x) if such event occurs during the Valuation Period, suspend any or all of such Seller Purchases or Seller Hedging, as the case may be, and may elect that the Daily Reference Share Amount on the affected Valuation Date or Valuation Dates for such day be reduced to zero or any other amount determined by Seller, or (y) if such event occurs during the Cash Settlement Averaging Period, suspend any or all of such Seller Purchases or Seller Hedging, as the case may be, and may elect that the affected Cash Settlement Averaging Date or Cash Settlement Averaging Dates be postponed, in each case as appropriate with regard to the relevant securities laws, market conditions or disruptions, and Seller shall notify Buyer of such suspension of Seller Purchases or Seller Hedging. Upon resuming Seller Purchases during the Valuation Period, Seller may adjust the Daily Reference Share Amount for any subsequent Valuation Date.

ARTICLE 5  
Representations and Warranties

Section 5.01. *Representations and Warranties of Buyer and Seller.* Each party hereto makes to the other party hereto the representations and warranties contained in Sections 3(a) and

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3(c) of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), as published by the International Swap Dealers Association, Inc., and each reference therein to “a Transaction” shall be deemed to be a reference to the Transaction, each reference therein to “this Agreement” shall be deemed to be a reference to this Agreement and any reference therein to any “Credit Support Document” shall be deemed to have been deleted with respect to Buyer and shall be deemed to be a reference to the Guarantee with respect to Seller.

Section 5.02. *Representations, Warranties and Agreements of Buyer.* Buyer represents and warrants to Seller that:

(a) No Termination Event has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

(b) All reports and other documents filed by Buyer with the Securities and Exchange Commission pursuant to the Exchange Act, when considered as a whole (with the most recent such reports and documents deemed to amend inconsistent statements contained in any earlier such reports and documents), do not contain any untrue statement of a material fact or any omission of a material fact required to be stated herein or necessary to make the statements therein, in the light of the circumstances in which they were made, not misleading.

(c) Buyer has publicly announced its entry into the Transaction, and Buyer agrees to comply with all applicable disclosure requirements relating to the Transaction including, without limitation, Item 703 of Regulation S-K under the Securities Act.

(d) Any Shares, when issued and delivered by Buyer in accordance with the terms of the Transaction, will be duly authorized and validly issued, fully paid and nonassessable, and the issuance thereof will not be subject to any preemptive or similar rights.

(e) Buyer has reserved and will keep available, free from preemptive rights, out of its authorized but unissued Shares, solely for the purpose of issuance upon settlement of the Transaction as herein provided, the full number of Shares as shall then be issuable upon settlement of the Transaction; subject to the limitation set forth in Article 2.

(f) Prior to the Settlement Date, any Shares to be delivered on the Settlement Date by Buyer shall have been approved for listing on the Exchange, subject to official notice of issuance (it being understood that nothing herein shall create any obligation of Buyer to register any Shares under the Securities Act).

(g) Buyer is not entering into this Agreement to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares), to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares), to facilitate a distribution of the Shares (or any security convertible into or exchangeable for Shares) or in connection with a future issuance of securities.

(h) Before and after giving effect to the Transaction, Buyer has complied with all applicable law, rules and regulations in connection with disclosure of all material information with respect to its business, operations or condition (financial or otherwise); and as of the date hereof and as of each day hereon forth until the Settlement Date, Buyer is not and will not be prohibited by law, contract or otherwise from purchasing Shares.

(i) Buyer is entering into this Agreement in good faith and not as part of plan or scheme to evade compliance with the federal securities laws including, without limitation, Rule 10b-5 of the Exchange Act. Buyer has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction.

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- (j) During the Valuation Period and the Cash Settlement Averaging Period, if any, Buyer does not have, and shall not attempt to exert, any influence over how, when, whether or at what price to effect any purchase or sale of Shares by Seller (or its agent or affiliate).
- (k) Buyer is not engaged in a “distribution”, as such term is used in Regulation M, that would preclude purchases by Buyer of Shares.
- (l) Buyer is an “eligible contract participant” as such term is defined in Section 1(a)(12) of the Commodity Exchange Act, as amended.
- (m) Buyer is not and, after giving effect to the Transaction, will not be an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.
- (n) Buyer is, and shall be as of the date of any payment or delivery by Buyer hereunder, solvent and able to pay its debts as they come due, with assets having a fair value greater than liabilities and with capital sufficient to carry on the businesses in which it engages.
- (o) Buyer (i) has timely filed, caused to be timely filed or will timely file or cause to be timely filed all material tax returns that are required to be filed by it as of the date hereof and (ii) has paid all material taxes shown to be due and payable on said returns or on any assessment made against it or any of its property and all other material taxes, assessments, fees, liabilities or other charges imposed on it or any of its property by any governmental authority, unless in each case the same are being contested in good faith. For purposes of determining whether a tax return has been timely filed, any extensions shall be taken into account.
- (p) The public disclosure of all material information relating to Buyer is within Buyer’s control.

ARTICLE 6  
Covenants of Buyer

Section 6.01. *Covenants of Buyer.* Buyer hereby agrees with Seller to the following:

- (a) Without the prior written consent of Seller, Buyer shall not, and shall cause its affiliates or affiliated purchasers (as defined in Rule 10b-18) not to, directly or indirectly (including by means of a derivative instrument) enter into any transaction to purchase any Shares, other than purchases from employees of Buyer that are not “Rule 10b-18 purchases” as such term is defined in Rule 10b-18, until its obligations under the Transaction have been satisfied in full.
  - (b) Buyer shall, at least one day prior to the first day of the Valuation Period, notify Seller of the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Buyer or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Valuation Period and during the calendar week in which the first day of the Valuation Period occurs (“Rule 10b-18 purchase”, “blocks” and “affiliated purchaser” each being used as defined in Rule 10b-18), which notice shall be substantially in the form set forth as Annex A hereto.
  - (c) Neither Buyer nor any of its affiliates shall take any action that would cause any Seller Purchases not to meet the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act if such purchases were made by Buyer.
  - (d) On any day prior to the second Business Day immediately following the last day of the Valuation Period, or, if the Final Settlement Amount is positive and Buyer has elected Cash Settlement in accordance with Article 2, the last day of the Cash Settlement Averaging Period, neither Buyer nor any of its affiliates or agents shall make a distribution (as defined in Regulation M) of Shares, or any security for which the Shares are a reference security (as defined in
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Regulation M) that would, in the view of Seller, preclude Buyer from purchasing Shares or cause any such purchases to violate any law, rule or regulation, unless Buyer notifies Seller of such distribution 5 Business Days prior to the beginning of the restricted period applicable to such distribution under Regulation M, in which case Buyer shall be deemed to have represented to Seller that Buyer is not aware of any material non-public information regarding Buyer or the Shares at the time of such notice. Buyer acknowledges that any such notice may (x) cause the Daily Reference Share Amount on any Valuation Date to be reduced or (y) if provided during the Cash Settlement Averaging Period if the Final Settlement Amount is positive, cause one or more Cash Settlement Averaging Date to be postponed, in each case as a result of the provisions of Section 4.02. Accordingly, Buyer acknowledges that its actions in relation to any such notice must comply with the standards set forth in Section 6.01(f).

(e) Buyer shall not, at any time during any of the Valuation Period or the Cash Settlement Averaging Period, if any, communicate, directly or indirectly, any material nonpublic information concerning itself or the Shares or purchases or sales of Shares by Seller (or its agent or affiliate) to any Relevant CSFB Personnel (as defined below). “**Relevant CSFB Personnel**” means any employee of Seller or any affiliate, except employees that Seller has notified Buyer in writing are not “Relevant CSFB Personnel”.

(f) Buyer agrees that Buyer shall not enter into or alter any hedging transaction relating to the Shares corresponding to or offsetting the Transaction. Buyer also acknowledges and agrees that any amendment, modification, waiver or termination of this Agreement must be effected in accordance with the requirements for the amendment or termination of a “plan” as defined in Rule 10b5-1(c) under the Exchange Act. Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act, and no such amendment, modification, waiver or termination shall be made at any time at which Buyer or any officer, director, manager or similar person of Buyer is aware of any material non-public information regarding Buyer or the Shares.

(g) Buyer shall (i) notify Seller prior to the opening of trading in the Shares on any day on which Buyer makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to Buyer (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), (ii) promptly notify Seller following any such announcement that such announcement has been made, and (iii) promptly deliver to Seller following the making of any such announcement a certificate indicating (A) Buyer’s average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Buyer’s block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b) (4) of Rule 10b-18 during the three full calendar months preceding the date of the announcement of such transaction. In addition, Buyer shall promptly notify Seller of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Buyer acknowledges that any such public announcement may (x) cause the Daily Reference Share Amount on any Valuation Date to be reduced or (y) if made during the Cash Settlement Averaging Period if the Final Settlement Amount is positive, cause one or more Cash Settlement Averaging Date to be postponed, in each case as a result of the provisions of Section 4.02. Accordingly, Buyer acknowledges that its actions in relation to any such announcement or transaction must comply with the standards set forth in Section 6.01(f).

## ARTICLE 7

### Adjustment and Termination Events

Section 7.01. *Calculation Agent Adjustments.* (a) In the event of any corporate event involving Buyer or the Shares (including, without limitation, a stock split, stock dividend,

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bankruptcy, insolvency, reorganization, merger, offer to tender Shares (whether such offer is made by the Company or a third party, and whether the consideration for such offer is cash or non-cash), rights offering, recapitalization, spin-off or issuance of any securities convertible or exchangeable into Shares) or the announcement of any such corporate event, the Calculation Agent may adjust the terms of the Transaction (including, without limitation, the number of Valuation Dates in the Valuation Period, any Daily Adjustment Price, any Daily Reference Share Amount, the Maximum Price, the Minimum Price and any Daily Difference) as it deems appropriate under the circumstances to preserve the economic value of the Transaction (including, without limitation, adjustments to account for changes in the price of the Shares or changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares as a result of any such corporate event).

(a) Notwithstanding the authority provided to the Calculation Agent in subsection (a) of this Section 7.01, in the event of a corporate event (such as certain reorganizations, mergers, or other similar events) in which all holders of Shares may receive consideration other than the common equity securities of the continuing or surviving entity, the adjustments referred to in such subsection shall permit Buyer or Seller to satisfy its settlement obligations hereunder by delivering the consideration received by holders of Shares upon such corporate event, in such proportions as in the exercise of its good faith judgment the Calculation Agent deems appropriate under the circumstances.

Section 7.02. *Termination Events.* If one or more of the following events (each, a “**Termination Event**”) shall occur:

(a) any legal proceeding shall have been instituted or any other event shall have occurred or condition shall exist that in Seller’s commercially reasonable judgment is likely to have a material adverse effect on the ability of Buyer or Seller to perform its obligations hereunder, or calls into question the validity or binding effect of any agreement of Buyer or Seller, as the case may be, hereunder;

(b) Buyer is (i) dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with, or for the benefit of, its creditors; (iv) institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, or it consents to a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official or it consents to such a petition; (v) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation (other than any such proceeding or petition covered under clause (iv) immediately above), and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (vi) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vii) seeks or becomes subject to the appointment of a Custodian for it or for all or substantially all its assets; (viii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (ix) is subject to any voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding as a result of

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which (A) all of the shares of Common Stock are required to be transferred to a Custodian or (B) holders of the shares of Common Stock become legally prohibited from transferring them; (x) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (ix) (inclusive); or (xi) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(c) (i) any representation or warranty made by Buyer under this Agreement is incorrect or misleading in any material respect or (ii) any certificate delivered by Buyer pursuant to this Agreement is incorrect or misleading in any material respect;

(d) Buyer fails to fulfill or discharge when due any of Buyer's obligations, covenants or agreements under or relating to this Agreement, and such failure remains unremedied for 10 days following notice from Seller;

(e) all of the Shares or all or substantially all the assets of Buyer are nationalized, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof;

(f) by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting Buyer, (i) all the Shares of Buyer are required to be transferred to a trustee, liquidator or other similar official or (ii) holders of the Shares of Buyer become legally prohibited from transferring them;

(g) the Exchange announces that pursuant to the rules of such Exchange, the Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or Tender Offer, as each such term is defined under the 2002 ISDA Equity Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc.) and will not be re-listed, re-traded or re-quoted on an exchange or quotation system located in the same country as the Exchange (or, where the Exchange is within the European Union, in any member state of the European Union) within five Scheduled Trading Days of so ceasing to be so listed, traded or quoted;

(h) Seller is unable, after using commercially reasonable efforts, to (A) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to the Transaction, or (B) realize, recover or remit the proceeds of any such transaction(s) or asset(s) (a "**Hedging Disruption**");

(i) due to the adoption of, or any change in, any applicable law after the date hereof, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after the date hereof, (i) it becomes unlawful for Buyer or Seller to perform any absolute or contingent obligation to make payment or delivery hereunder or to comply with any other material provision of this Agreement or (ii) Buyer or Seller determines in good faith that (A) it has become illegal to hold, acquire or dispose of Shares or (B) it would incur a materially increased cost in performing its obligations hereunder (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position); or

(j) Buyer declares or pays any dividend or distribution on the Shares in cash or other property (other than additional Shares);

then, in the absolute discretion of Seller upon notice to Seller from Buyer at any time following such event, a "**Termination Date**" shall occur, and Buyer or Seller, as the case may be, shall become obligated to make the payments or deliveries that would be made if the final Valuation Date in the Valuation Period were the Termination Date, the Final Settlement Amount were the Termination Amount and Cash Settlement did not apply.

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The “**Termination Value**” means an amount Seller reasonably determines in good faith to be appropriate to compensate Seller for its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement, including any loss of bargain, loss of funding or, at the election of Seller but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them), including losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Termination Date and not made; *provided* that if the Termination Event giving rise to the relevant Termination Date is of the type described in clause (a) of this Section 7.02 and the relevant legal proceeding arises primarily out of an act or omission by Seller, then the “Termination Value” will mean an amount Buyer reasonably determines in good faith to be appropriate to compensate Buyer for its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement, including any loss of bargain, loss of funding or, at the election of Buyer but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them), including losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Termination Date and not made.

The “**Termination Amount**” means a number of Shares with a value, as determined by the Calculation Agent, as of the Termination Date equal the Termination Value.

## ARTICLE 8 Miscellaneous

Section 8.01. *U.S. Private Placement Representations.* Each party hereby represents and warrants to the other party as of the date hereof that:

(a) It is an “accredited investor” (as defined in Regulation D under the Securities Act) and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the Transaction, and it is able to bear the economic risk of the Transaction.

(b) It is entering into the Transaction for its own account and not with a view to the distribution or resale of the Transaction or its rights thereunder except pursuant to a registration statement declared effective under, or an exemption from the registration requirements of, the Securities Act.

Section 8.02. *Bankruptcy of Buyer.* Seller agrees that in the event of the bankruptcy of Buyer, Seller shall not have rights or assert a claim that is senior in priority to the rights and claims available to the shareholders of the common stock of Buyer.

Section 8.03. *10b5-1.* The parties intend for the Transaction to comply with the requirements of Rule 10b5-1(c)(1)(i)(B) under the Exchange Act and this Agreement to constitute a binding contract, instruction or plan satisfying the requirements of 10b5-1(c) and to be interpreted to comply with the requirements of Rule 10b5-1(c).

Section 8.04. *Securities Contract.* The parties hereto acknowledge and agree that each of Seller and the Agent is a “stockbroker” within the meaning of Section 101 (53A) of Title 11 of the United States Code (the “**Bankruptcy Code**”) and the Agent is acting as agent for Seller and that Seller is a “customer” of the Agent within the meaning of Section 741(2) of the Bankruptcy Code. The parties hereto further recognize that the Transaction is a “securities contract”, as such term is defined in Section 741(7) of the Bankruptcy Code, entitled to the protection of, among other provisions, Sections 555 and 362(b)(6) of the Bankruptcy Code, and that each payment or delivery of cash, Shares or other property or assets hereunder is a “settlement payment” within the meaning of Section 741(8) of the Bankruptcy Code.

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Section 8.05. *No Collateral*. The parties hereto acknowledge that the Transaction is not secured by any collateral that would otherwise secure the obligations of Buyer hereunder.

Section 8.06. *Agreements to Deliver Documents*. (a) Seller and Buyer agree to deliver the following documents, as applicable:

- (i) Buyer will deliver to Seller, upon execution of this Agreement,
  - (A) evidence reasonably satisfactory to the other party as to the names, true signatures and authority of the officers or officials signing this Agreement on its behalf,
  - (B) certified resolutions evidencing necessary corporate authority and approvals with respect to the execution, delivery and performance by Buyer of this Agreement,
  - (C) a certified copy of each of the current Certificate of Incorporation and By-laws of Buyer,
  - (D) an opinion of nationally recognized counsel acceptable to Seller to the effect set forth in Annex B hereto, and
  - (E) an opinion of the General Counsel for Buyer to the effect set forth in Annex C hereto.
- (ii) Seller will deliver to Buyer, upon execution of this Agreement, a duly executed copy of the Guarantee.

Section 8.07. *Assignment*. The rights and duties under this Agreement may not be assigned or transferred by any party hereto without the prior written consent of the other parties hereto, such consent not to be unreasonably withheld; *provided* that (i) Seller may assign or transfer any of its rights or duties hereunder to any of its affiliates without the prior written consent of Buyer and (ii) the Agent may assign or transfer any of its rights or duties hereunder without the prior written consent of the other parties hereto to any affiliate of Credit Suisse First Boston, so long as such affiliate is a broker-dealer registered with the SEC.

Section 8.08. *Non-Confidentiality*. The parties hereby agree that (i) effective from the date of commencement of discussions concerning the Transaction, Buyer and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind, including opinions or other tax analyses, provided by Seller and its affiliates to Buyer relating to such tax treatment and tax structure; provided that the foregoing does not constitute an authorization to disclose the identity of Seller or its affiliates, agents or advisers, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information, and (ii) Seller does not assert any claim of proprietary ownership in respect of any description contained herein or therein relating to the use of any entities, plans or arrangements to give rise to a particular United States federal income tax treatment for Buyer.

Section 8.09. *Indemnification*. Buyer agrees to indemnify and hold harmless Seller, its affiliates, their respective directors, officers, employees, agents, advisors, brokers and representatives and each person who controls Seller or its affiliates within the meaning of either the Securities Act or the Exchange Act against, and Buyer agrees that no indemnified party shall have any liability to Buyer or any of its affiliates, officers, directors, or employees for, any losses, claims, damages, liabilities (whether direct or indirect, in contract, tort or otherwise) or expenses, joint or several, to which any indemnified party may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages, liabilities or expenses (or actions, claims, investigations

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or proceedings in respect thereof, whether commenced or threatened) (i) arise out of or relate to (A) actions or failures to act by Buyer or (B) actions or failures to act by an indemnified party with the consent of, upon the direction of, or with the knowledge of Buyer or (ii) otherwise arise out of or relate to the Transaction or any related transactions, *provided* that this clause (ii) shall not apply to the extent, but only to the extent, that any losses, claims, damages, liabilities or expenses of an indemnified party have resulted primarily from the gross negligence or willful misconduct of such indemnified party in which case Seller shall indemnify Buyer for any losses, claims, damages, liabilities (whether direct or indirect, in contract, tort or otherwise) or expenses which Buyer may suffer as a result of such indemnified party's gross negligence or willful misconduct. Buyer agrees to reimburse promptly each such indemnified party for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damages, liability, expense or action. This indemnity agreement will be in addition to any liability which Buyer may otherwise have.

Section 8.10. *Legal Proceedings.* Buyer shall not, without the prior written consent of Seller, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability arising from such proceeding.

Section 8.11. *Contribution.* If the indemnification provided for above is unavailable to an indemnified party in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages, liabilities or expenses, in such proportion as is appropriate to reflect not only the relative fault of Buyer on the one hand and of Seller on the other in connection with the statements or omissions which resulted in such losses, claims, damages, expenses or liabilities, but also any other relevant equitable considerations. The amount paid or payable by a party as a result of the losses, claims, damages, liabilities and expenses referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating or defending any action or claim. The parties agree that it would not be just and equitable if contribution pursuant to this paragraph were determined by a method of allocation that does not take account of the equitable considerations referred to in this paragraph. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

Section 8.12. *Notices.*

Notices to Seller shall be directed to its care of:

Address for notices or communications to Seller (other than by facsimile) (for all purposes):

Address: Credit Suisse First Boston Capital LLC  
c/o Credit Suisse First Boston LLC  
11 Madison Avenue  
New York, NY 10010  
Attn: Senior Legal Officer  
Tel: (212) 538-4488  
Fax: (212) 325-4585

With a copy to: Credit Suisse First Boston LLC  
1 Madison Avenue, 3rd Floor  
New York, New York 10010

For payments and deliveries:  
Attn: Ricardo Harewood

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Tel: (212) 325-8678  
Fax: (212) 325-8175

For all other communications:  
Attn: Carlos Moscoso / John Ryan  
Tel.: (212) 538-1872 / (212) 325-8681  
Fax: (212) 538-8898

Notices to Buyer shall be directed to Buyer at:

211 Carnegie Center  
Princeton, New Jersey  
Attn: General Counsel and Chief Financial Officer  
Tel: (609) 524-4500

Section 8.13. *Governing Law; Submission to Jurisdiction; Severability; Waiver of Jury Trial; Service of Process.* (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without reference to choice of law doctrine and each party hereto submits to the jurisdiction of the Courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City.

(b) To the extent permitted by law, the unenforceability or invalidity of any provision or provisions of this Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

(c) **Seller and Buyer hereby irrevocably and unconditionally waive any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.** Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

(d) The parties irrevocably consent to service of process given in the manner provided for notices in Section 8.12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

Section 8.14. *Entire Agreement.* This constitutes the entire agreement and understanding among the parties with respect to the subject matter hereof and supersedes all oral communications and prior writings with respect thereto.

Section 8.15. *Amendments, Waivers.* Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and Seller or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 8.16. *No Third Party Rights, Successors and Assigns.* This Agreement is not intended and shall not be construed to create any rights in any person other than Seller, Buyer and their respective successors and assigns and no other person shall assert any rights as third party beneficiary hereunder. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party. All the covenants and agreements herein contained by or on behalf of Seller and Buyer shall bind, and inure to the benefit of, their respective successors and assigns whether so expressed or not, and shall be enforceable by and

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inure to the benefit of Buyer and its successors and assigns. The rights and duties under this Agreement may not be assigned or transferred by any party hereto without the prior written consent of the other parties hereto, such consent not to be unreasonably withheld; *provided* that (i) Buyer may assign or transfer any of its rights or duties hereunder without the prior written consent of Seller and (ii) the Agent may assign or transfer any of its rights or duties hereunder without the prior written consent of the other parties hereto to any affiliate of Credit Suisse First Boston, so long as such affiliate is a broker-dealer registered with the Securities and Exchange Commission.

Section 8.17. *Calculation Agent*. The determinations and calculations of the Calculation Agent shall be made in good faith and in a commercially reasonable manner and shall be binding in the absence of manifest error. The Calculation Agent will have no responsibility for good faith errors or omissions in any determination or calculation under this Agreement. The parties acknowledge that the foregoing does not preclude the parties from disputing that any determination or calculation of the Calculation Agent was made in good faith or in a commercially reasonable manner.

Section 8.18. *Limitation of Setoff*. For purposes of the Transaction and for the avoidance of doubt, Seller waives any right of set-off, recoupment or close-out netting that it may be entitled to under any agreement relating to the Transaction or any applicable law.

Section 8.19. *Non-Reliance; Agreements and Acknowledgments Regarding Hedging Activities; Additional Acknowledgments*. Each party hereto makes to the other party hereto the representations, agreements and acknowledgments contained in Sections 13.1, 13.2 and 13.4 of the 2002 ISDA Equity Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc., and each reference therein to “the related Confirmation” shall be deemed to be a reference to this Agreement and each reference therein to “a Transaction”, “such Transaction” and “any Transaction” shall be deemed to be a reference to the Transaction.

Section 8.20. *Matters Related to Credit Suisse First Boston LLC and Credit Suisse First Boston Capital LLC*. (a) Credit Suisse First Boston LLC shall act as “agent” for Buyer and Seller in connection with the Transaction.

(b) Agent will furnish to Buyer upon written request a statement as to the source and amount of any remuneration received or to be received by Agent in connection herewith.

(c) Agent has no obligation hereunder, by guaranty, endorsement or otherwise, with respect to performance of Seller’s obligations hereunder.

(d) Credit Suisse First Boston Capital LLC is an “OTC derivatives dealer” as such term is defined in the Exchange Act and is an affiliate of Agent.

(e) Credit Suisse First Boston Capital LLC is not a member of the Securities Investor Protection Corporation.

Section 8.21. *Counterparts*. This Agreement may be executed in any number of counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date and year first above written.

BUYER:

NRG ENERGY, INC.

By: /s/ ROBERT C. FLEXON \_\_\_\_\_

Name: Robert C. Flexon

Title: Chief Financial Officer

SELLER:

CREDIT SUISSE FIRST BOSTON CAPITAL LLC

By: /s/ CHRISTY GRANT \_\_\_\_\_

Name: Christy Grant

Title: Assistant Vice President Operations

AGENT:

CREDIT SUISSE FIRST BOSTON LLC

By: /s/ JOHN RYAN \_\_\_\_\_

Name: John Ryan

Title: Assistant Vice President Operations

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**Form of Notice**

**Form of Opinion of Kirkland & Ellis LLP**



FOR IMMEDIATE RELEASE

**NRG Energy Closes Convertible Perpetual Preferred Stock Issuance and  
Completes \$250 Million Accelerated Share Repurchase**

**PRINCETON, NJ; August 11, 2005**—NRG Energy, Inc. (NYSE:NRG) today closed its previously announced convertible perpetual preferred stock issuance and in a related transaction, completed a \$250 million accelerated share repurchase of its common stock, in each case with an affiliate of Credit Suisse First Boston (CSFB).

As part of the Preferred Stock Purchase Agreement dated August 10, 2005 between NRG and CSFB, NRG issued and sold \$250 million in new 3.625% convertible perpetual preferred stock to CSFB in a private transaction. The preferred stock may be settled at the option of CSFB or the Company during a 90-day period commencing August 11, 2005. Upon settlement, NRG will pay CSFB \$250 million in cash plus accrued and unpaid dividends, if any, to redeem the preferred stock. If the market value of the underlying NRG common shares is in excess of \$59.09 (150% of the closing price on August 10, 2005), NRG will pay CSFB the net difference in cash or shares of NRG common stock. If the Company's common share price at settlement is lower than \$39.39, CSFB will pay NRG the net difference in cash or shares of NRG common stock. Only common shares equal to the value of the security in excess of \$59.09, may be included in the earnings per share dilution calculation, if dilutive.

NRG expects to use the cash proceeds from the preferred stock issuance to repurchase approximately \$229 million of our 8% second priority senior secured notes at 108% of par which will bring the total amount of our 8% notes redeemed or repurchased to \$645 million during 2005. After the redemption, we will have approximately \$1.08 billion in aggregate principal amount of notes outstanding. The Company expects to complete the redemption of the 8% notes in September 2005.

"This accelerated share repurchase provides an efficient, meaningful and immediate return of capital to shareholders while maintaining, and even enhancing, our capital structure," said David Crane, NRG President and Chief Executive Officer. "While we expect to be able to reinvest our capital in enhancing our asset portfolio, this decision to repurchase shares and notes is a sensible and efficient use of capital at this time."

Issuing the preferred stock gave NRG the capacity, under its debt instruments, to use existing cash to fund the \$250 million accelerated share repurchase program. NRG purchased 6,346,788 shares of common stock from CSFB at a price of \$39.39 per share (the closing price on August 10, 2005). Under the terms of the accelerated share repurchase agreement with CSFB, NRG will have fixed its price risk under the agreement at 97%-103% (\$38.21 — \$40.57 per share) of the common share price at execution. As a result of this transaction, NRG's outstanding shares have decreased to approximately 80,700,000.

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NRG Energy, Inc. owns and operates a diverse portfolio of power-generating facilities, primarily in the Northeast, South Central and Western regions of the United States. Its operations include baseload, intermediate, peaking, and cogeneration facilities, thermal energy production and energy resource recovery facilities. NRG also has ownership interests in international generating facilities in Australia and Germany.

**Safe Harbor Disclosure**

This news release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Such forward-looking statements are subject to certain risks, uncertainties and assumptions and include, but are not limited to, expected earnings, future growth, expected use of proceeds, expected benefits of capital allocation initiatives and financial performance, and typically can be identified by the use of words such as “expect,” “estimate,” “anticipate,” “forecast,” “plan,” “believe” and similar terms. Although NRG believes that its expectations are reasonable, it can give no assurance that these expectations will prove to have been correct, and actual results may vary materially. Factors that could cause actual results to differ materially from those contemplated above include, among others, general economic conditions, hazards customary in the power industry, weather conditions, competition in wholesale power markets, the volatility of energy and fuel prices, failure of customers to perform under contracts, changes in the wholesale power markets and related government regulation, the condition of capital markets generally, our ability to access capital markets, unanticipated outages at our generation facilities, our ability to convert facilities to use western coal successfully, adverse results in current and future litigation, the inability to implement value enhancing improvements to plant operations and company-wide processes and the ability to achieve the expected results from capital allocation initiatives.

NRG undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The foregoing review of factors that could cause NRG’s actual results to differ materially from those contemplated in the forward-looking statements included in this news release should be considered in connection with information regarding risks and uncertainties that may affect NRG’s future results included in NRG’s filings with the Securities and Exchange Commission at [www.sec.gov](http://www.sec.gov).

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**More information on NRG is available at [www.nrgenergy.com](http://www.nrgenergy.com)**

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