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SBW-1

EXECUTION VERSION

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# POWER PURCHASE AGREEMENT

# FOR

# LEMPSTER MOUNTAIN WIND POWER

This POWER PURCHASE AGREEMENT ("Agreement") is made and entered into as of January 2,2008 (the "Effective Date") by and between Lempster Wind, LLC, a Delaware limited liability company (hereinafter referred to as the "Seller"), and Public Service Company of New Hampshire, a New Hampshire corporation having its principal place of business in Manchester, New Hampshire (hereinafter referred to as "PSNH"). For the purposes of this Agreement, Seller and PSNH shall be referred to individually as a "Party", and shall be referred to collectively as the "Parties".

WHEREAS, Seller proposes to construct, own and operate, or cause to be constructed, owned and operated a wind energy electric generating facility, known as Lempster Mountain Wind Power (the "Facility") as described in Appendix A for the generation of electricity and transfer of electricity to PSNH's electric distribution system; and

WHEREAS, Seller intends that, prior to the date on which Energy (as defined below) is first delivered fiom the Facility to PSNH's electric transmission and distribution system, the Facility will be certified as a "qualifying facility" as defined in the Public Utility Regulatory Policies Act of 1978 and in 18 Code of Federal Regulations Part 292 (1986), as they may be amended from time to time; and

WHEREAS, Seller and PSNH have completed negotiations for PSNH's purchase of electricity fiom Seller over the Term (as hereinafter defined); and

WHEREAS, subject to the terms of this Agreement, Seller will sell to PSNH, and PSNH will purchase fiom Seller, all the Products (except as provided herein) and one hundred percent (100%) of all Renewable Energy Certificates generated by the Facility and delivered to PSNH; and

WHEREAS, the Parties anticipate that this Agreement, the Interconnection Agreement (as hereinafter defined) and the Repurchase Agreement (as hereinafter defined) are related agreements which shall have been made and entered into on the same date; and

WHEREAS, Seller desires, in accordance with the terms of the Interconnection Agreement, to interconnect the Facility with the electric distribution system of PSNH in accordance with applicable New Hampshire Public Utilities Commission orders and federal law; and

WHEREAS, Seller desires, in accordance with the terms of the Repurchase Agreement, to repurchase certain Renewable Energy Certificates generated by the Facility fiom PSNH; and

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereby agree that the following terms and conditions shall govern Seller's sale and transfer of Products and Renewable Energy Certificates generated from the Facility to PSNH and PSNH's purchase and acceptance of such Products and Renewable Energy Certificates from Seller:

## ARTICLE 1. DEFINITIONS

**1.1 Any capitalized terms not defined herein shall have the meanings set forth in the ISO-NE Documents.**

1.2 **Affiliate** shall mean, with respect to any Party, an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 **Bankrupt** shall mean with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) becomes subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such entity by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator under any bankruptcy, insolvency, reorganization or similar law, for a substantial portion of its property and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days following the entry of such order, judgment or decree, (iii) makes an assignment or any general arrangement for the benefit of creditors, or (iv) is generally unable to pay its debts as they fall due.

1.4 **Business Day** shall mean any day on which Federal Reserve member banks in New York City are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices

only, Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

**1.5** **Capacity Payment** shall have the meaning described in Section 7.2.4.

**1.6** **Credit Rating** means the rating then assigned to a Qualified Institution, or any referenced third party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if a Qualified Institution or such third party does not have a rating for its senior unsecured long-term debt, then one rating notch below the rating then assigned to a Qualified Institution or such third party as an issuer and/or corporate credit rating by S&P, Moody's, Fitch or an equivalent rating by another nationally recognized rating service reasonably acceptable to PSNH. If there are split ratings, the lowest of the Credit Ratings will apply.

**1.7** **CPR Rules** shall have the meaning described in Section 15.3

**1.8** **Defaulting Party** shall have the meaning described in Section 8.1.

**1.9** **Delivery Point** shall mean the Interconnection Point, as defined in the Interconnection Agreement.

**1.10** **Emergency Condition** shall have the same meaning when used herein as in the Interconnection Agreement.

**1.11** **Energy** shall mean the three-phase, 60-cycle alternating current electric energy output of the Facility.

**1.12** **Energy Floor Price** shall have the meaning described in Section 7.2.2.

**1.13** **Energy Purchase Price** shall have the meaning described in Section 7.2.1.

**1.14** **Force Majeure Event** shall mean any of the following events beyond the control of the Party affected which wholly or party prevents or delays the performance of any obligation under this Agreement: (a) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, rebellion, violent demonstrations, revolution, sabotage or terrorist action; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornados, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Facility; (d) explosion, accident or epidemic; (e) actions of a Governmental Authority or inaction of a Governmental Authority; (f) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; (g) the unavailability of experienced and trained labor, fuel, power or raw materials, the breakdown of the Facility or other plant breakdown or equipment failure, and any event affecting the ability of any supplier (including under any engineering, procurement or construction agreement for the Facility) to the Facility to fulfill its obligations to Seller and the Facility; (h) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals, or other assistances to or adjuncts of shipping or navigation, or quarantine; (i) nuclear emergency, radioactive contamination or ionizing radiation or the release of any hazardous waste or materials; (j) air crash, shipwreck, train wrecks or other failures or delays of transportation; (k) the occurrence of an Emergency Condition; or (l) any other cause beyond the reasonable control of the Party claiming the Force Majeure Event and not due to the fault, gross negligence, or intentional misconduct of the Party claiming the Force Majeure Event, which, in any of the foregoing cases, by the exercise of reasonable diligence such Party could not reasonably have been expected to avoid and which, by the exercise of reasonable diligence, it has been unable to overcome.

**1.15** **GIS** shall mean the New England Power Pool Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or

successor entity, that accounts for the generation attributes of electricity generated within New England.

1.16 **Governmental Authority** shall mean any federal, state, local or municipal governmental body exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power with respect to the Facility or this Agreement.

1.17 **Gross Monthly Energy Value** shall mean the total for any month of the mathematical products of the actual hourly Energy, expressed in megawatt hours, delivered to the Delivery Point from the Facility multiplied by the corresponding ISO-NE Energy Price for that hour.

1.18 **Gross Monthly Energy Floor Value** shall mean the total for any month of the sum of the actual hourly Energy, expressed in megawatt hours, delivered to the Delivery Point from the Facility multiplied by the corresponding Energy Floor Price.

1.19 **Guarantor** means any entity (i) that is an Affiliate of the Party whose obligations are being guaranteed or is that is otherwise acceptable to the Party receiving the guaranty in its reasonable discretion, (ii) that has an Investment Grade Rating and (iii) that agrees in writing to guarantee such Party's financial obligations under this Agreement pursuant to a guaranty for prompt payment when due of all present and future obligations of such Party under the terms of this Agreement, in a form reasonably satisfactory to the Party receiving such guaranty.

1.20 **In-Service Date** shall mean the date on which Seller declares not less than five (5) wind turbine generators in the Facility as in service for purposes of qualification for the Production Tax Credits and such wind turbine generators are capable of regular operation, with adequate wind, at an electric output level of at least ten thousand (10,000) kilowatt hours ("kWh") per hour.

**1.21** **Institutional Investor** shall mean any equity investor in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates that receives a substantial part of its return on investment from utilization of tax benefits arising from the Facility, including Production Tax Credits.

**1.22** **Interconnection Agreement** shall mean the Interconnection Agreement for the Lempster Wind Project dated as of the Effective Date between PSNH and Seller, as the same may be now or hereafter amended or supplemented.

**1.23** **Interest Rate** shall mean, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law in transactions involving entities having the same characteristics as the Parties.

**1.24** **Investment Grade Rating** shall mean a Credit Rating of "Baa3" or better from Moody's, "BBB-" or better from S&P or Fitch, or an equivalent Credit Rating by another nationally recognized rating service reasonably acceptable to the Party accepting a guaranty of the obligations of the other Party. If there are split ratings, the lowest of the Credit Ratings will apply.

**1.25** **ISO-NE Documents** shall mean the ISO New England Inc. Transmission, Markets and Services Tariff, ISO New England Inc. FERC Electric Tariff No. 3 (Section III - Market Rule 1 – Standard Market Design), ISO-NE manuals and related documents, or any successor documents.

**1.26** **ISO-NE Energy Price** shall mean the hourly Real-Time ISO-NE locational marginal price ("LMP") at the pricing location designated for the Facility within the ISO-NE settlement and billing systems, currently anticipated to be node ID #4394 (the "North

Road" node) in the New Hampshire Load Zone of the ISO-NE market system, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current LMP.

**1.27** **ISO-NE** shall mean ISO New England Inc., the Regional Transmission Operator for the ISO-NE control area, and its successors and assigns.

**1.28** **Late Payment Rate** shall have the meaning described in Section 7.3.4.

**1.29** **Lead Lender** shall mean any one Lender that shall be delegated to act on behalf of any and all other Lenders, or any agent or trustee acting on behalf of any and all Lenders, for purposes of receiving notice of an Event of Default by Seller under Section 8.2.2 and exercising any rights to cure on behalf of Seller.

**1.30** **Lead Institutional Investor** shall mean any one Institutional Investor that shall be delegated to act on behalf of any and all other Institutional Investors for purposes of receiving notice of an Event of Default by Seller under Section 23.6

**1.31** **Lender** shall mean any lender or lenders and their successors in interest, of which Seller has given PSNH advance notice, providing term, construction, working capital or any other form of financing for the Facility or providing any other financing or extension of credit to any Person secured in whole or in part by an interest in the Facility or any portion thereof, including lenders of more than one tier or tranche and any Person acting as collateral agent or security trustee for the benefit of any such lender or lenders.

**1.32** **NHPUC** shall mean the New Hampshire Public Utilities Commission.

**1.33** **Non-Defaulting Party** shall have the meaning described in Section 8.2.1.

**1.34** **NTP** shall mean as defined in the Interconnection Agreement.

1.35 **Person** shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

1.36 **Production Tax Credits** or **PTCs** shall have the meaning described in Section 7.5.

1.37 **Products** shall mean all Energy and Capacity produced by the Facility during the Term.

1.38 **Project Site** shall mean the land on Lempster Mountain in Lempster, Massachusetts on which the Facility is to be located.

1.39 **Project Year** shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the In-Service Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Project Year shall include the days in the prior month in which the In-Service Date occurred.

1.40 **Prudent Engineering and Operating Practices** shall mean (i) Good Utility Practice as defined in the Interconnection Agreement for the portion of the equipment related to the Interconnection Agreement and (ii) the practices, methods and acts applicable to projects similar to the Facility located in the ISO-NE control area (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the independent power industry) that at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been reasonably expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition for all other equipment. With respect to the Facility, Prudent Engineering and Operating Practices include but are not limited to taking reasonable steps to ensure that:

(1) Adequate materials, resources and supplies are available to meet the Facility's needs.

(2) Sufficient operating personnel are available and are adequately experienced and trained to operate the Facility properly and efficiently and are capable of responding to emergency conditions.

(3) Preventative, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable long-term and safe operation, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools.

(4) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions.

(5) Equipment is not operated in a reckless manner, or in a manner unsafe to workers or the general public or without regard to defined limitations such as operating voltage, current, frequency, rotational speed, synchronization, control system limits.

**1.41** **PSNH Discounted Products Price** shall have the meaning described in Section 7.2.1.

**1.42** **PTC Date** shall mean December 31, 2008 except as provided in the next sentence. If (i) there is an extension of the date by which wind energy electric generation projects must be placed in service in order to be eligible to receive Production Tax Credits and (ii) the Production Tax Credits as so extended have substantially the same economic value to Seller as the Production Tax Credits available for electric generation projects placed in service as of the Effective Date pursuant to Section 45 of the Internal Revenue Code of 1954, as amended, as in effect as of the Effective Date, then the PTC Date shall be the final date of such extension for eligibility of wind energy electric generation projects for

such Production Tax Credits. The Production Tax Credit available for electric generation projects placed in service as of the Effective Date is twenty ($20.00) per megawatt hour, expressed in 2007 dollars, and adjusted annually based on the published inflation adjustment factor.

1.43 **Qualified Institution** shall mean a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A" by S&P and "A2" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital surplus of at least $10,000,000,000.

1.44 **Regulatory Event** shall have the meaning described in Section 9.1.

1.45 **Renewable Energy Certificate** or **REC** shall mean a NEPOOL GIS Certificate that identifies the relevant generation attributes of each megawatt hour accounted for in the NEPOOL GIS that could be used to satisfy any State or Federal RPS existing as of the date such megawatt hour is generated. If for any reason NEPOOL GIS Certificates are not issued at any time during the Term, RECs shall mean, with respect to any Energy generated by the Facility, any renewable energy certificates as may be used to satisfy any then existing State or Federal RPS. This definition specifically excludes state and federal production tax credits, investment tax credits, incentives or grants and any other tax credits, incentives or grants, or greenhouse gas and other emission reduction credits, claims or value separate from a NEPOOL GIS Certificate, which are or will be earned by the Facility, which shall be owned solely by Seller with respect to the generation of such renewable power. For avoidance of doubt, any GIS Certificates and any similar rights, as well as any successors to such GIS Certificates or similar rights, shall be considered to be RECs. For purposes of this Agreement, unless otherwise mutually agreed by the Parties, a REC shall be deemed to have been delivered to PSNH when an electronic certificate has been produced in the GIS for a megawatt hour of Energy resulting from the generation of

Energy from the Facility and such certificate has been credited to PSNH's account in the GIS; provided, however, that if (i) at any time during the Term when Energy is being generated from the Facility PSNH fails to maintain an account in the GIS or (ii) if the GIS does not at any time hereafter continue to exist as a method for tracking the ownership of RECs, then a REC shall be deemed to have been delivered to PSNH upon delivery of a REC Attestation and Bill of Sale in the form attached as **Appendix B** by Seller to PSNH evidencing the transfer of ownership of such REC from Seller to PSNH.

**1.46** **Repurchase Agreement** shall mean the Renewable Energy Certificate Option Agreement, dated as of the Effective Date, between PSNH and Seller, as the same may be now or hereafter amended or supplemented.

**1.47** **RPS** shall have the meaning described in Section 7.4.1.

**1.48** **Term** shall have the meaning described in Section 4.1.

## ARTICLE 2. DESCRIPTION OF THE FACILITY AND THE PROJECT SITE

**2.1** **Description.** The Facility and the Project Site are described in Appendix A hereto.

**2.2** **Selection of Wind Generation Equipment.** Seller shall have in effect an extended maintenance warranty on the wind turbine generators included in the Facility for a minimum term of two (2) years, and business interruption insurance on industry standard terms.

## ARTICLE 3. GOVERNMENTAL ACTIONS

**3.1** **Compliance with Law.** Seller and PSNH shall at all times comply with all valid and applicable Federal, State and local laws, rules, regulations, orders and other actions of a Governmental Authority applicable to the Facility and this Agreement, the failure to

comply with which would have a material adverse effect on the applicable Party's ability to perform its obligations under this Agreement.

3.2 **No Consent.** By agreeing to comply with all valid and applicable laws, rules, regulations, orders and other actions of a Governmental Authority, Seller and PSNH do not intend to advocate, support or consent to, any action of a Governmental Authority (whether executive, legislative, judicial or regulatory) nullifying, canceling, abrogating, or substantially altering any material term or condition of this Agreement or either Party's rights, remedies or reasonable expectations under this Agreement, including but not limited to any action that would alter the payments required by Article 7 or the regulatory treatment described in Section 7.4. Seller and PSNH shall have the right to assert and claim that any such action(s) of a Governmental Authority is contrary to Federal or New Hampshire law and/or to the United States or New Hampshire Constitutions. Further, Seller and PSNH shall neither seek nor support, and shall in good faith contest, any such action(s) of a Governmental Authority, and each Party hereby agrees to join and actively support the other in any reasonable challenge the other may bring to any such Governmental Authority.

3.3 **PURPA Qualification.** The Facility shall be, and shall maintain its status as a Qualifying Facility ("QF") as defined by Section 210 of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") and FERC regulations thereunder, both as in effect as of the Effective Date, unless PURPA is repealed, the concept of QF is modified after the Effective Date such that the Facility will no longer qualify as a QF in its configuration as contemplated by this Agreement or the concept of QF is otherwise eliminated from the laws and regulations relating to electric generating facilities. This Agreement shall be a long-term power purchase obligation. Notwithstanding the above, Seller and PSNH intend that this Agreement remain in effect notwithstanding the amendment or repeal of PURPA or related New Hampshire legislation unless the transaction contemplated

hereunder is prohibited by applicable statutes the effectiveness of which have not been stayed or enjoined.

**3.4 Change in Regulation/Law.** Each Party understands and accepts that it bears the risk of regulatory change, except as otherwise expressly provided in Section 8.3.1

## ARTICLE 4. TERM

**4.1 Term.** The term of this Agreement shall commence upon the Effective Date and shall terminate, except as otherwise provided in this Agreement, at the end of Project Year 15 (the "Term").

**4.2 In-Service Date.** Seller shall provide a minimum of thirty (30) days advance notice to PSNH of all dates upon which Seller tests the Facility in order to establish the In-Service Date. PSNH shall have the right to be present at the Project Site, and to receive documentary evidence of the Facility's operation. The Parties currently anticipate that the In-Service Date will occur on or prior to December 31, 2008, as that date may be extended by a Force Majeure Event.

**4.3 Project Site Control.** Seller shall not enter into any agreement for the Project Site that limits the operation of the Facility thereon for less than fifteen (15) years.

**4.4 Facility Ownership.**

**4.4.1** If Seller decides to sell the Facility, it must provide advance notice to PSNH of such decision. PSNH shall have the right to present a proposal for the purchase of the Facility and the land (or land rights) necessary for the Facility within thirty (30) days after it receives such notice, which proposal shall be considered by Seller on the same basis and under the same criterion as any other proposal or offer that may be considered by Seller. This right to present a proposal shall not become effective until after the In-Service Date.

**4.4.2** The provisions of Section 4.4.1 shall not be applicable to (i) any transfer of the Facility or any part thereof to an Affiliate of Seller, (ii) any transfer of the Facility or any part thereof by Seller to any Lenders as collateral security for obligations under the financing documents entered into with such Lenders, or (iii) any transfer of the Facility or any part thereof by any Lenders to a third party after the Lenders have exercised their foreclosure rights with respect to the Facility, provided, that, notwithstanding this clause (iii), PSNH shall have the right without objection by Seller to present a proposal to any such Lenders for the purchase of the Facility and the land (or land rights) necessary for the Facility following the exercise by any such Lenders of their foreclosure rights.

**4.4.3** If ownership of the Facility is transferred to a third party, other than as described in clauses (ii) or (iii) of Section 4.4.2, then Seller shall include as part of the transfer and sale agreement with the third party the obligation that the new owner shall assume all of the rights and obligations set forth in this Agreement.

## ARTICLE 5. CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITY

**5.1** Seller shall construct, operate and maintain the Facility using Prudent Engineering and Operating Practices, and in compliance with the provisions of this Agreement.

**5.2** PSNH, in order to benefit from the Seasonal Claimed Capability provided by the Facility, may periodically need to obtain recognition of and credit for the Seasonal Claimed Capability of the Facility from NEPOOL and/or ISO-NE, or other associations or entities to which PSNH has contractual responsibilities for providing electrical capacity. If, in order to obtain such recognition, PSNH must obtain these ratings for the Facility under rules set out by such association or entity, Seller shall assist PSNH in performing any tests and audits of the Facility's output capability as PSNH may from time to time reasonably request upon at least ten (10) days prior notice; provided, that such test and

audits will not delay or interrupt the performance or Energy production from the Facility or otherwise interfere with the construction, operation or maintenance schedule of the Facility.

**5.3** Every day (including weekends and holidays) by 9:00 a.m. Eastern Prevailing Time, Seller must provide to PSNH in electronic format an estimated hourly schedule of deliverables as specified by ISO-NE for generating units such as the Facility for the following day, except that Seller may provide such schedule for weekends and holidays on the preceding Business Day. PSNH shall be responsible for scheduling and coordination of the output of the Facility with ISO-NE. Without limiting the foregoing, Seller will designate PSNH as the "Generator Asset Owner" and "Lead Market Participant" in accordance with ISO-NE Documents in order for PSNH to carry out the foregoing responsibilities pursuant to the ISO-NE Documents. For purposes of this Article 5, Seller and PSNH acknowledge and agree that deliverables produced by the Facility depend upon, or are affected by, the availability of wind and climate conditions during the year and that variations from any estimated schedule of deliverables are customarily expected for such reasons.

**5.4** Prior to October 1 of each year, Seller shall submit to PSNH for review and comment by PSNH the proposed dates and durations of planned scheduled maintenance requiring shutdown or reduction in output of all or a portion of the Facility. Seller shall:

**5.4.1** Revise the timing and duration of shutdowns and reductions for planned scheduled maintenance to accommodate any reasonable requests made by PSNH within sixty (60) days from PSNH's receipt of the initial schedule, unless such revisions would not be consistent with Prudent Engineering and Operating Practices; and

**5.4.2** Make all reasonable efforts, consistent with Prudent Engineering and Operating Practices, to accommodate any additional changes in the initial schedule requested by PSNH.

**5.5** Seller shall provide to any relevant party any information as may be required from time to time by ISO-NE, New Hampshire Satellite office, or PSNH to comply with ISO New England System Rules, reliability needs and auditing requirements. The Parties will cooperate to seek to maintain the confidentiality of any such information provided to any third party.

**5.6** If an Emergency Condition occurs and PSNH notifies Seller thereof pursuant to the Interconnection Agreement or ISO-NE notifies Seller thereof in accordance with the ISO-NE Documents, PSNH and Seller will take such actions or inactions during any period during which such Emergency Condition exists as may be required or permitted by each such Party pursuant to the Interconnection Agreement. If any such action includes the curtailment by Seller of deliveries of any Products during all or any part of the period in which such Emergency Condition exists, Seller shall be entitled to effect such curtailment and PSNH shall have no obligation to pay for any Products or related PSNH RECs that would have been delivered by Seller during such periods for which Seller has curtailed deliveries. PSNH shall have no obligation to accept or pay for any Products or related PSNH RECs associated with energy deliveries in excess of the level to which Seller curtailed its deliveries during such periods, but PSNH shall pay Seller for any Products delivered up to the level to which Seller curtailed during such periods.

## ARTICLE 6. INTERCONNECTION

### 6.1 <u>Interconnection and Protections Requirements</u>.

**6.1.1** Seller shall install or provide for the installation of all interconnection, protection, metering, and control equipment as specified in the Interconnection Agreement.

**6.1.2** Up to the Delivery Point, all equipment shall be the sole property of Seller. Seller shall have sole responsibility for the operation, maintenance, replacement, and repair of the Facility, including the interconnection equipment owned by Seller.

## ARTICLE 7. POWER SALES, BILLING AND PAYMENT

**7.1** **Purchase and Sale Obligation.** Upon and after the In-Service Date and for the remainder of the Term hereof, Seller shall sell to PSNH, and PSNH shall purchase from Seller one hundred percent (100%) of the Energy, Capacity and RECs generated by the Facility and delivered as set forth herein. PSNH shall pay Seller for all such deliverables in accordance with this Article 7 and any other applicable provision of this Agreement. Without limiting the foregoing, Seller also shall sell and deliver, and PSNH also shall purchase and pay for, all Energy from any portion of the Facility delivered as set forth herein prior to the In-Service Date at a rate equal to [redacted] of the ISO-NE Energy Price.

**7.2** <u>**Generation Pricing – Products**</u>.

**7.2.1** **Energy Purchase Price.** During the Term, the price PSNH purchases Energy from the Facility shall be equal to the greater of (i) [redacted] of the Gross Monthly Energy Value (the "PSNH Discounted Products Price") or (ii) the Gross Monthly Energy Floor Value, which shall be the "Energy Purchase Price".

**7.2.2** **Energy Floor Price.** The "Energy Floor Price" shall be [redacted] whr for Project Years 1 through 15.

**7.2.3** **Delivery of Energy.** PSNH shall take delivery of the Energy from the Facility at the Delivery Point; subject to the provisions of this Agreement and of the Interconnection Agreement. PSNH shall be responsible for all costs and charges applicable to such receipt and transmission, including all charges, costs, fees, uplift charges, balancing charges, scheduling charges, or penalties, congestion and

other charges or penalties in connection with the transmission of such Energy under the tariffs of any transmission or distribution provider, as each may be amended from time to time, and any other transmission service or agreement. It shall be PSNH's responsibility to enter into suitable transmission as may be necessary to accomplish the foregoing. PSNH shall not be excused from its obligation to receive and to pay for the delivery of all Energy from the Facility at the Delivery Point on account of any failure of transmission services at or away from the Delivery Point except as specifically provided pursuant to Article 9 of this Agreement or as a result of the occurrence of an Emergency Condition to the extent provided in Section 5.6. Nothing in this Section 7.2.3 is intended to limit or otherwise affect the obligations of Seller under Section 6.1.

**7.2.4 Capacity Purchase Price.** Starting on the beginning of Project [redacted] PSNH shall pay to Seller for Capacity from the Facility a price of [redacted] of the dollar amount PSNH is credited for the Facility's Capacity in PSNH's ISO-NE settlement account (the "Capacity Payment"). Prior to Project [redacted] Seller will receive no compensation from PSNH related to the Facility's Capacity.

**7.3 <u>Monthly Billing Procedure</u>.**

**7.3.1** Not later than five (5) Business Days following the end of each calendar month, PSNH shall read the Seller's meters installed as described in Section IV(B) of Attachment 2 to Exhibit B of the Interconnection Agreement (which is the Interconnection Report), calculate a monthly invoice for the applicable Products and RECs, and provide this information to Seller within ten (10) days of such reading. Seller shall then return to PSNH the approved invoice for payment and PSNH shall make payments to Seller electronically for the total amount due within twenty-three (23) days of the meter reading date or ten (10) days of Seller's return to PSNH of the approved invoice, whichever is later.

7.3.2 The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement and the Interconnection Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement and/or the Interconnection Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts, interest, and payments or credits, that Party shall pay such sum in full when due, subject to the provisions addressing disputed amounts set forth in Section 7.3.5. Except as set forth above in this Section 7.3.2, all payments hereunder shall be made without set-off or deduction.

7.3.3 Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Interest Rate, but in no event shall such interest exceed the maximum interest rate permitted by applicable law ("Late Payment Rate").

7.3.4 If either Party disputes the amount of any bill, it shall so notify the other Party in writing. Each Party receiving a bill shall pay to the other Party any undisputed amount of the bill or charges when due. The disputed amount may, at the discretion of the paying Party, be held by that Party until the dispute has been resolved; provided that the paying Party shall be responsible to pay interest on any withheld amounts that are determined to have been properly billed, which shall be calculated in the same manner as interest on late payments under Section 7.3.4. The disputed amount may be held by the paying Party provided that the paying Party or its Guarantor, if applicable, has an Investment Grade Rating, or by a

Qualified Institution if the paying Party or its Guarantor, if applicable, does not have such a rating. Neither Party shall have the right to challenge any monthly bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty four (24) months from the date the bill was due; provided, however, that in the case of a bill based on estimates, such twenty-four month period shall run from the due date of the final adjusted bill.

**7.4 Facility Renewable Energy Certificates.**

**7.4.1** Commencing on the In-Service Date and ending at the end of Project Year 15, Seller agrees to convey one hundred percent (100%) of all Renewable Energy Certificates generated by the Facility to which it is entitled under regulations and laws to PSNH ("PSNH RECs"), and PSNH agrees to purchase the PSNH RECs. Without limiting the foregoing, Seller also shall sell and deliver, and PSNH also shall purchase and pay for, all Renewable Energy Certificates generated by the Facility to which it is entitled under regulations and laws prior to the In-Service Date and any such Renewable Energy Certificates shall also be deemed to be PSNH RECs for all purposes of this Agreement. For the avoidance of doubt, except for Products, Seller shall not be obligated to sell and deliver, and PSNH shall not be obligated to purchase and pay for, any attributes from the generation of renewable energy from the Facility other than those attributes that satisfy the requirements of the definition of RECs as set forth herein. If generator registration, documentation or other certification data or filings are required to enable PSNH RECs to be claimed by PSNH hereunder, Seller shall cooperate with, and assist PSNH in pursuing, such registration, data or filings promptly and in good faith. PSNH shall be entitled to and agrees to purchase any and all of the PSNH RECs whether they arise pursuant to existing or future energy generation disclosure and tracking laws and regulations, or existing or future certification, certification program, trading market, or other renewable energy program to the

extent that the Facility as described in Appendix A or as modified pursuant to this Section 7.4 meets such laws, regulations or programs. Without limiting the foregoing, subject to compliance with reasonable requirements of Seller to maintain confidentiality and the provisions of Section 7.4.2 hereof, Seller shall use commercially reasonable efforts (i) to provide PSNH with any information necessary for PSNH to fulfill any applicable regulatory or other obligation for fuel source, emissions, or labor status information disclosure requirements, as they may be in effect from time to time, (ii) to register the Facility with the various Federal and regional REC markets renewable portfolio standards ("RPS") programs, to transfer the PSNH RECs to PSNH for use in such markets, and to otherwise fully support PSNH in meeting the administrative requirements to qualify for RECs from the Facility in such markets, and (iii) to meet the highest quality requirements for wind facilities in the RPS requirements in effect as of the Effective Date for Connecticut, Rhode Island, Maine, Massachusetts and New Hampshire, and, except for circumstances arising as a result of a Governmental Change (as hereinafter defined), to continue to meet such requirements during the Term. Seller also agrees, promptly following receipt by Seller of a written request of PSNH and at PSNH's sole cost and expense, (i) to attempt to meet the highest quality requirements for wind facilities in any RPS requirements created after the Effective Date by the state of Vermont and (ii) to continue to meet such requirements during the Term.

7.4.2 If a Governmental Change (as hereinafter defined) occurs that would require Seller to make a capital expenditure, to incur any expense, to incur any liability, or to increase operating costs for the Facility to continue to produce PSNH RECs or for Seller to transfer the PSNH RECs to PSNH, at PSNH's sole option so long as PSNH, in a manner reasonably acceptable to Seller, agrees to compensate Seller for all such capital expenditures, costs, losses and expenses and agrees to bear such liabilities, Seller shall (a) take such actions, as reasonably requested by

PSNH, and (b) execute such documents as necessary to convey to PSNH the PSNH RECs, in a form reasonably acceptable to Seller. If a Governmental Change occurs where Seller realizes the monetary value of any PSNH RECs and Seller is unable to transfer such PSNH RECs to PSNH notwithstanding PSNH's request to transfer such PSNH RECs to PSNH and PSNH's willingness to bear any liabilities incurred by Seller or compensate Seller for any expenses, losses or costs as provided above, Seller shall, within 30 days of actual receipt, pay to PSNH the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the PSNH RECs within a reasonable time after such amounts are paid to Seller. Subject to the reimbursement obligations of PSNH with respect to such efforts, Seller shall use commercially reasonable efforts to realize any such monetary value. Nothing in this Section shall require Seller to take any action in violation of any applicable law or regulation or any permit or other approval or consent of any Governmental Authority, in each case that is applicable to the Facility or Seller or in violation of any contractual obligation of Seller. "Governmental Change" means any and all actions of any Governmental Authority (including without limitation regulatory actions, judicial decisions, executive orders, and legislative actions) that eliminates or prevents Seller from conveying to PSNH the PSNH RECs, in whole or in part, pursuant to the terms of this Agreement.

**7.4.3** The price PSNH pays Seller for the PSNH RECs (the "PSNH REC Price") will be [redacted] for Project Years 1 through 5, [redacted] for Project Years 6 through 10, and [redacted] for Project Years 11 through 15.

**7.4.4** Payment for the PSNH RECs by PSNH to Seller will be made monthly and shall be the product of the PSNH REC Price multiplied by the Energy from the Facility delivered to PSNH in that month. Payments made by PSNH for any RECs pursuant to this Section, which RECs are not subsequently delivered, shall be

credited to PSNH on the next monthly invoice following the date on which such RECs should have been delivered.

7.4.5 No later than thirty (30) days after the end of each quarter with respect to such quarter, Seller shall deliver to PSNH a REC Attestation and Bill of Sale in the form attached as **Appendix B** with respect to the PSNH RECs associated with the Energy from the Facility delivered to PSNH during such quarter; *provided* that Seller shall have the right to utilize instead such other forms of documents or instruments as Seller may propose, subject to PSNH 's approval (such approval not to be unreasonably withheld and such approval or rejection not to be unreasonably delayed) and Seller may propose less frequent deliveries of such REC Attestation and Bill of Sale (but not less frequently than once every twelve (12) months, subject to PSNH 's approval, such approval not to be unreasonably withheld and such approval or rejection not to be unreasonably delayed).

7.5 **Production Tax Credits and Other Incentives.** Seller shall retain (i) any production tax credits that may be available for the Facility pursuant to Section 45 of the Internal Revenue Code of 1954, as amended ("PTCs") and any and all other state and federal production tax credits, investment tax credits and any other tax credits or tax benefits which are or will be generated by the Facility, (ii) cash payments or outright grants of money which are specific to project development, and (iii) other financial incentives which, if achieved, will result in cash payments by the party providing such incentives and which are specific to project development; provided, however that any incentives described in clauses (ii) or (iii) above that are specifically directed to a purchaser of electric energy or capacity shall be paid to PSNH.

## ARTICLE 8. EVENTS OF DEFAULT; TERMINATION

8.1 **Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

**8.1.1** such Party fails to pay an amount due by the due date, and such failure is not remedied within three (3) Business Days after notice by the other Party;

**8.1.2** any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and the effect of such misrepresentation is not remedied within thirty (30) days after notice by the other Party; provided that, if any such representation or warranty cannot be made true or cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the Non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

**8.1.3** the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) Business Days after notice by the other Party; provided that, if any such default cannot be cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default

within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;

**8.1.4** such Party becomes Bankrupt; or

**8.1.5** such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

## 8.2 Rights of Non-Defaulting Party

**8.2.1** If an Event of Default as set forth in this Article 8 with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to notify the Defaulting Party and (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective as an early termination date of this Agreement, and/or (ii) withhold any payments due to the Defaulting Party under this Agreement, and/or (iii) suspend performance; provided, that if PSNH or Seller at any time hereafter suspends its performance hereunder pursuant to this Section 8.2.1, notwithstanding any provision of this Agreement to the contrary, Seller shall have the right to sell any or all of the Products and Renewable Energy Certificates to one or more third parties until such time as the suspension terminates pursuant to notice from PSNH to Seller or Seller to PSNH, as the case may be.

8.2.2 In the case of an Event of Default by Seller pursuant to the provisions of Section 8.2.1, PSNH shall provide the Lender (if any), or if more than one Lender exists, the Lead Lender with notice at the same time as its notification of Seller of such Event of Default and the Lender or Lead Lender on behalf of the Lenders, as the case may be, shall have the right (but not the obligation) for ninety (90) days after receipt of such notice either to cure the Event of Default on behalf of Seller, or, upon payment to PSNH of amounts due from Seller but not paid by Seller, to assume, or cause its designee or a lessee or purchaser of the Facility to assume, all of the rights and obligations of Seller under this Agreement arising after the date of such assumption as more fully described in Article 23. Such notice by PSNH to such Lender or Lead Lender shall not affect PSNH's rights under Section 8.2.1.

## 8.3 Other Termination Rights

8.3.1 **Seller's Right to Terminate**. This Agreement may be terminated by Seller prior to the expiration of the Term as follows:

(i) Prior to issuance of the NTP, provided that Seller shall give PSNH notice of such termination within ten (10) Business Days after such date; or

(ii) At any time up to the In-Service Date in the event that Seller decides to (i) cancel the Project because Seller is unable to procure and have delivered to the Project Site all of the equipment and materials required to construct and operate the Facility, including, but not limited to, the wind turbine generators and all ancillary and supporting equipment and installations and all control and monitoring systems, in each case on a timely basis consistent with the milestones and delivery times specified by Seller in order to be able to complete construction and commence operation of the Facility in accordance with the requirements of this Agreement including achieving the In-Service Date by the PTC Date, on

commercially reasonable terms and at a total installed cost consistent with Seller's budgeted costs on an economically feasible basis with a return on its total investment in the Facility satisfactory to Seller in its sole discretion or (ii) cancel or delay the Project because Seller has determined in good faith that PSNH is not reasonably likely to be able to complete and place in operation the PSNH Interconnection Facilities (as defined in the Interconnection Agreement) or such portion thereof as will be required for all of the wind turbine generators in the Facility to be placed in service in order to be eligible to receive Production Tax Credits prior to the PTC Date in effect as of the date of such determination by Seller.

**8.3.2 PSNH's Right to Terminate.** PSNH may, at its sole option and discretion, terminate this Agreement if (i) the Interconnection Agreement is not executed on or before the Effective Date, (ii) Seller fails to issue an NTP to PSNH by December 31, 2008, (iii) Seller announces its plans to permanently shut down the Facility and stop operating the wind turbine generators, or (iv) Seller fails after the In-Service Date to operate at least one (1) of the wind turbine generators and deliver any power to the Delivery Point for a period of twelve (12) consecutive months; provided that in each case PSNH shall give Seller notice of such termination within ten (10) Business Days after such date; and further provided that the twelve (12) month period referred to in subsection (iii) shall be extended for any period that Seller was unable to operate the generators and deliver power to PSNH in whole or in part as a result of the occurrence of a Force Majeure Event.

## 8.4 Termination Liability

**8.4.1** If, prior to the In-Service Date, PSNH terminates this Agreement pursuant to Section 8.3.2 or Seller terminates this Agreement pursuant to Section 8.3.1, then

except as provided in Section 8.4.2, neither Party shall have any liability to the other Party pursuant to this Agreement and the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or from its obligations under certain other provisions of this Agreement as provided in Article 25.

**8.4.2** Further, if Seller terminates this Agreement pursuant to Section 8.3.1 before the In-Service Date or if PSNH terminates this Agreement pursuant to subsection 8.3.2 then, for a period of three (3) years following delivery of notice by Seller to PSNH of the termination of this Agreement (or for the remainder of the Term in the case of a termination of this Agreement by PSNH pursuant to subsection 8.3.2) neither Seller, its affiliates, successors or assigns shall: (i) seek to sell, or to sell, any electricity from an electric generating facility on the Project Site to a third person without PSNH's consent; or (ii) be entitled to enter into a long term power sales agreement for the sale of any Products and/or Renewable Energy Certificates from an electric generating facility on the Project Site with any entity other than PSNH; provided, that the foregoing restrictions shall terminate if Seller has offered in writing to PSNH during such period to reinstate this Agreement or enter into a new Agreement on the same terms and conditions as this Agreement (but which new Agreement may include, in the case of new Agreement offered following a termination of this Agreement by Seller pursuant to clause (ii) of Section 8.3.1, such increase in the price to be paid by PSNH for Energy as Seller determines in good faith will be required in order for Seller to pay any increased costs of the Facility arising from any delay in achieving the In-Service Date for the Facility and/or to recover any loss in economic value to Seller of the Production Tax Credits, in either case resulting from the inability of Seller to

place any of the wind turbine generators in the Facility in service prior to the PTC Date because of the inability of PSNH for any reason to complete and place in operation the PSNH Interconnection Facilities or such portion thereof as is required for all of the wind turbine generators in the Facility to be placed in service prior to the PTC Date) and PSNH has not agreed in writing to reinstate this Agreement or enter into such a new Agreement within sixty (60) days following the receipt by PSNH of such offer.

**8.4.3** If, following the In-Service Date, either Party terminates this Agreement pursuant to Section 8.2, both Parties shall be discharged from all further obligation under the terms of this Agreement, excepting (i) any liability which may have been incurred before the date of such termination and any liability on account of such termination, including without limitation the obligation to pay for power delivered prior to any such termination and/or for all direct damages incurred by the non-defaulting party on account of any termination for default, which obligations shall survive the termination of this Agreement, and (ii) any liability which survives termination of this Agreement.

## ARTICLE 9. FORCE MAJEURE

**9.1** Neither Party shall be considered to be in default hereunder and shall be excused from performance hereunder (other than an obligation to pay money when due) if and to the extent that it shall be prevented or delayed from doing so during the continuation of any Force Majeure Event suffered by the Party whose performance is delayed or prevented in respect thereof, provided that the Party claiming excuse from performance uses commercially reasonable efforts to remedy or otherwise mitigate, in all material respects, its inability to perform and to resume performance hereunder as soon as practicable under the circumstances. The Party experiencing the delay or hindrance shall notify the other Party in writing of the occurrence of such Force Majeure Event and the anticipated period

of delay within ten (10) Business Days after the commencement of the Force Majeure Event, provided that the failure of the Party experiencing the delay or hindrance to notify the other Party within such ten (10) Business Day period shall not preclude such Party from claiming a Force Majeure Event hereunder. Notwithstanding the foregoing, any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change that constitutes a Force Majeure Event, including pursuant to clause (v) of the definition thereof (individually or collectively, such events referred to as "Regulatory Event"), will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their reasonable efforts to reform this Agreement in order to give effect to the original intention of the Parties.

## ARTICLE 10. REPRESENTATIONS AND WARRANTIES

**10.1** **PSNH's Representations and Warranties**. PSNH hereby represents and warrants that, as of the date of this Agreement:

**10.1.1** PSNH is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Hampshire; and PSNH has all requisite power and authority under such laws to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

**10.1.2** The execution, delivery, and performance of its obligations under this Agreement by PSNH have been duly authorized by all necessary action under the laws of the State of New Hampshire, and do not and will not:

(a) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to PSNH, the violation of which could reasonably be expected to have a material

adverse effect on the ability of PSNH to perform its obligations under this Agreement,

(b) result in a breach of or constitute a default under any agreement relating to the management or affairs of PSNH or any indenture or loan or credit agreement or any other agreement, lease or instrument to which PSNH is a party or by which PSNH or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of PSNH to perform its obligations under this Agreement, or

(c) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of PSNH now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of PSNH to perform its obligations under this Agreement.

**10.1.3** This Agreement is the valid and binding obligation of PSNH, enforceable against PSNH in accordance with its terms, subject to general principles of equity.

**10.1.4** The execution, delivery and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which PSNH is a party that could reasonably be expected to have a material adverse effect on the ability of PSNH to perform its obligations under this Agreement or any judgment, order, statute or regulation that is applicable to PSNH.

**10.1.5** Except for the obligations related to the Interconnection Agreement, as of the Effective Date, there are no approvals, authorizations, consents or other actions

required by any other Governmental Authority to authorize PSNH's execution, delivery and performance under this Agreement which have not already been obtained or which are not reasonably expected to be obtained in due course.

**10.1.6** There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of PSNH, threatened against or directly affecting PSNH at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality that prohibits or impairs its ability to execute and deliver this Agreement or that would materially adversely affect its ability to perform its obligations under this Agreement. PSNH has not received notice of any such pending or threatened investigation, inquiry or review by any governmental entity.

**10.2** **Seller's Representations and Warranties**. Seller hereby represents and warrants that, as of the date of this Agreement:

**10.2.1** Seller is a limited liability company duly organized and validly existing under the laws of the State of Delaware. Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

**10.2.2** The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:

(i) violate any provision of any law, rule, regulation, ordinance, charter, order, writ, judgment, injunction, decree, determination or award having applicability to Seller the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement,

(ii) result in a breach of or constitute a default under any provision of the charter and ordinances of Seller,

(iii) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement, or

(iv) result in, or require, the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

**10.2.3** This Agreement is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to general principles of equity.

**10.2.4** The execution, delivery and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which it is a party that could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement or any judgment, order, statute, or regulation that is applicable to Seller.

**10.2.5** To Seller's knowledge, as of the Effective Date, there are no approvals, authorizations, consents or other actions required by any other Governmental Authority to authorize Seller's execution, delivery and performance under this

Agreement which have not already been obtained or which are not reasonably expected to be obtained in due course.

**10.2.6** There is no action, suit, grievance, arbitration or proceeding pending or, to the knowledge of Seller, threatened against or directly affecting PSNH at law or in equity, before any federal, state, municipal or other governmental court, department, commission, board, arbitrator, bureau, agency or instrumentality that prohibits or impairs its ability to execute and deliver this Agreement or that would materially adversely affect its ability to perform its obligations under this Agreement. Seller has not received notice of any such pending or threatened investigation, inquiry or review by any governmental entity.

## ARTICLE 11. TITLE AND RISK OF LOSS; TAXES

**11.1** Title to and risk of loss related to the Products shall transfer from Seller to PSNH at the Delivery Point, as applicable. Seller warrants that it will deliver to PSNH the Products and Renewable Energy Certificates free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

**11.2** Seller shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the sale of the Products and Renewable Energy Certificates prior to the Delivery Point, as applicable. PSNH shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the purchase of the Products and Renewable Energy Certificates at, from and after the Delivery Point. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of Taxes, fees and levies.

## ARTICLE 12. INDEMNITY

12.1 Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party and its Affiliates and their respective officers, trustees, directors, agents, employees and representatives (each an "Indemnified Party", and collectively the "Indemnified Parties") from and against any and all claims, actions, demands, losses, liabilities and expenses (including reasonable attorneys' fees and costs), and judgments, fines, settlements and other amounts ("Damages") arising from or out of any event, circumstance, act or incident first occurring or existing during the period when the Indemnifying Party has control and title to the Products; except to the extent caused by an act of gross negligence, fraud or willful misconduct of the other Party. Each Party shall indemnify, defend and hold harmless the other Party against any Taxes, fees and levies for which such Party is responsible under Section 11.2.

12.2 Promptly after receipt by an Indemnified Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in this Article 12 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided that, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party, then the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer will pay the expenses of such separate counsel.

## ARTICLE 13. DISCLAIMER AND LIMITATION OF LIABILITIES

**13.1** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. LOST PROFITS OR REVENUES (EXCEPT AS A PART OF DIRECT DAMAGES OR AS SPECIFICALLY PROVIDED IN THIS AGREEMENT) OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER OR NOT SUCH LIABILITY IS CLAIMED IN CONTRACT, EQUITY, TORT, STRICT LIABILITY OR INDEMNITY, BY STATUTE, UNDER ANY INDEMNITY OR OTHER PROVISION OF THIS AGREEMENT OR OTHERWISE. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES

REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE 14. FERC STANDARD OF REVIEW; CERTAIN COVENANTS AND WAIVERS

**14.1** With respect to the Federal Energy Regulatory Commission ("FERC"), the standard of review for changes to any section of this Agreement specifying the pricing or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. V. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

**14.2** The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, including any credit, security, margin, guaranty or other similar arrangement, and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

**14.3** Notwithstanding the foregoing Subsections 14.1 and 14.2, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly

(through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. It is the express intent of the Parties that, to the fullest extent permitted by applicable law, the "sanctity of contract" principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this Section 14.3 shall not apply, provided that, consistent with Section 14.1, neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in Section 14.1.

**14.4** The Parties agree that in the event that any portion of this Article 14 is determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of Article 14 shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

## ARTICLE 15. DISPUTE RESOLUTION

**15.1** **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's

position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

**15.2** **Mediation.** If the dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within fifteen (15) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then current CPR Mediation Procedure as posted on the CPR website at http://www.cpradr.org/; provided, however, that if one Party fails to participate in the negotiation as provided in Section 15.1, the other Party can initiate mediation prior to the expiration of the thirty (30) Business Days. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

**15.3** **Arbitration.** Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures as set forth in Sections 15.1 and 15.2 within fifty (50) Business Days of the delivery of the Initial Notice, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million

dollars ($3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars ($3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4; provided, however, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. A decision and award of the arbitrator(s) made under the CPR Rules and within the scope of jurisdiction of such arbitrator(s) shall be exclusive, final, and binding on the Parties, their successors, and assigns. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and foregoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

**15.4** The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Agreement. To the fullest extent permitted by law, any mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

**15.5** **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

## ARTICLE 16. CONFIDENTIALITY

**16.1** The terms of this Agreement, and any other information exchanged by the PSNH and Seller relating to this Agreement, shall not be disclosed to any person not employed or retained by the PSNH or Seller or their Affiliates, except to the extent disclosure is (1) required by law, required to be made to any Governmental Authority for obtaining any approval, permits and licenses, or making any filing in connection therewith, required by the Interconnection Agreement or delivered by Seller to ISO-NE or to any Person exercising authority over Seller or the Facility for the purpose of maintaining the safety or reliability of the electric system into which the Energy output is delivered, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency) or pursuant to the rules or regulations of any stock exchange to which a Party or any of its Affiliates are bound, (5) to any actual or potential Lender, to any actual or potential investor in Seller or an Affiliate of Seller or to any other potential acquiror of any direct or indirect ownership interest in Seller or to any advisor providing professional advise to Seller or to any such actual or potential Lender, investor or acquiror. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision). The Parties specifically agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon by the Parties. Notwithstanding the foregoing, Seller may

disclose (including by press release) without the consent of PSNH only (a) the identity of PSNH as the Facility power purchaser, (b) the Term of the Agreement, and (c) the annual or other periodic quantity of Energy sold hereunder.

**16.2** The obligations of the Parties under this Article 16 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

## ARTICLE 17. MODIFICATION OF AGREEMENT

**17.1** In order for any modification to this Agreement to be binding upon the Parties, said modification must be in writing and signed by both Parties.

## ARTICLE 18. PRIOR AGREEMENTS SUPERSEDED

**18.1** Once effective, this Agreement represents the entire agreement between the Parties with respect to the purchase of power from the Facility and, as between Seller and PSNH, all previous agreements including previous discussion, communications and correspondence related thereto with respect to the purchase of power from the Facility are superseded by the execution of this Agreement.

## ARTICLE 19. WAIVER OF TERMS OR CONDITIONS.

**19.1** The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall remain at all times in full force and effect. Any waiver is only effective if given to the other Party in writing.

## ARTICLE 20. APPLICABLE LAW.

**20.1** This Agreement is made under the laws of the State of New Hampshire and, to the extent applicable, the Federal Power Act, and the interpretation and performance hereof shall be in accordance with and controlled by such laws, excluding any conflicts of law provisions

of the State of New Hampshire that could require application of the laws of any other jurisdiction.

## ARTICLE 21. HEADINGS.

**21.1** Captions and headings in the Agreement are for ease of reference and shall not be used to and do not affect the meaning of this Agreement.

## ARTICLE 22. NOTICES AND SERVICE.

**22.1** All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, except as otherwise provided or as reasonable under the circumstances. Service of a notice may be accomplished and will be deemed to have been received by the recipient Party on the day of delivery if delivered by personal service, on the day of confirmed receipt if delivered by telegram, registered or certified commercial overnight courier, or registered or certified mail or on the day of transmission if sent by telecopy or email with evidence of receipt obtained, and in each case addressed as follows:

Seller: Lempster Wind, LLC
c/o Iberdrola Renewable Energies USA, Ltd.
201 King of Prussia Road, Suite 500
Radnor, PA 19087
Attention: Eduardo Brunet and Pablo Canales
Telephone No.: 610.254.9800
Fax No. 610.254.9781
Email: ebrunet@iberdrolausa.com and pcanales@iberdrolausa.com

PSNH: Public Service Company of New Hampshire
780 North Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Telephone No. (603) 634-2312
Fax No. (603) 634-2449
Email: psnhsesd@psnh.com

## ARTICLE 23. ASSIGNMENT

**23.1** This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. Except as provided in Section 23.2, this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that no assignment authorized pursuant to this Section 23.1 or Section 23.2 shall release the Assigning Party from any of its obligations under this Agreement except as expressly provided in Section 23.3 or unless a written release is executed by the non-assigning Party in the non-assigning Party's sole discretion.

**23.2** Notwithstanding the foregoing, no consent shall be required for:

(i) Any assignment or transfer of this Agreement by Seller to an Affiliate of Seller succeeding to all or substantially all (but including all of the assets that are required to produce Products and RECs in the same manner as prior to such assignment) of the assets included in the Facility;

(ii) Any assignment or transfer of this Agreement by Seller to any Lenders as collateral security for obligations under the financing documents entered into with such Lenders; or

(iii) Any assignment or transfer by the Lenders to a third party after the Lenders have exercised their foreclosure rights with respect to this Agreement or the Facility; provided, that any such third party agrees in writing to be bound by and to assume, the terms and conditions hereof and each such obligation hereunder applicable to Seller from and after the date of such assignment or transfer.

**23.3** If the rights and interests of Seller in this Agreement shall be assumed, sold or transferred as herein provided, and the assuming party shall agree in writing to be bound by and to assume, the terms and conditions hereof and any and all obligations to PSNH arising or

accruing hereunder from and after the date of such assumption, then Seller shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and PSNH shall continue this Agreement with the assuming party as if such Person had been named as Seller under this Agreement.

**23.4** The provisions of this Article 23 are for the benefit of the Lenders as well as the Parties hereto, and shall be enforceable by the Lenders as express third-party beneficiaries hereof. PSNH hereby agrees that none of the Lenders, nor any bondholder or participant for whom they may act or any trustee acting on their behalf, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to PSNH with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to this Article 23.

**23.5** Any purported assignment not in compliance with this Article 23 shall be null and void.

**23.6** If one or more Institutional Investors make an investment in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates for purposes of financing the construction, installation or operation of the Facility and Seller or any of Seller's Affiliates or any such successor or permitted assignee has notified PSNH in writing of the existence of such Institutional Investor(s), which notice includes the information required to be provided by Seller to PSNH pursuant to Section 24.2 with respect to Lenders, then PSNH agrees that (i) in the case of an Event of Default by Seller, PSNH shall provide the Institutional Investor if only one exists or, if more than one Institutional Investor exists, the Lead Institutional Investor with notice of such Event of Default and (ii) upon the receipt of a written request from Seller or the Institutional Investor if only one exists or, if more than one Institutional Investor exists, the Lead Institutional Investor, PSNH shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for

Seller to consummate any investment in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates.

## ARTICLE 24. FINANCINGS

**24.1** Seller, upon prior notice to PSNH but not subject to approval of PSNH, may, by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Facility.

**24.2** Promptly after making such encumbrance, Seller shall notify PSNH in writing of the name, address, and telephone and facsimile numbers of each Lender (including, if more than one Lender exists, the Lead Lender) to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders (including, if more than one Lender exists, the Lead Lender) to whom all written and telephonic communications may be addressed; provided, if there is more than one Lender to which Seller's interest under this Agreement has been encumbered, PSNH shall not have any obligations to provide written or telephonic communications hereunder to any Lender other than the Lead Lender.

**24.3** After giving PSNH such initial notice, Seller shall promptly give PSNH notice of any change in the information provided in the initial notice or any revised notice.

**24.4** If Seller encumbers its interest under this Agreement as permitted by this Section 24, the following provisions shall apply:

(i) The Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without the prior written consent of the Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender, such consent not to be unreasonably withheld, conditioned, or delayed;

(ii) The Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender, or their respective designees shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller and such act performed by the Lenders, the Lead Lender or their respective designees shall be as effective to prevent or cure an Event of Default as if done by Seller;

(iii) PSNH shall upon request by Seller execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of Events of Default hereunder by Seller and documents of consent to such assignment to the encumbrance and any assignment to the Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender for the benefit of the Lenders; and

(iv) Upon the receipt of a written request from Seller or from any Lender if only one Lender exists or, if more than one Lender exists, from the Lead Lender, PSNH shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of, or secured in whole or in part by, the Facility or any part thereof and will enter into reasonable agreements with such Lender if only one Lender exists or, if more than one Lender exists, with the Lead Lender for the benefit of the Lenders, which agreements will grant certain rights to the Lender as more fully developed and described in such documents, including the following: (a) this Agreement shall not be terminated (except for termination pursuant to the terms of this Agreement) without the consent of Lender if only one Lender exists or, if more than one Lender

exists, the consent of the Lead Lender, which consent is not to be unreasonably withheld, conditioned or delayed; (b) that Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender shall be given notice of, and the opportunity to cure as provided in Section 8.2.2 hereof, any breach or default of this Agreement by Seller; (c) that if any one or more of the Lenders forecloses, takes a deed in lieu of foreclosure or otherwise exercises its remedies pursuant to any security documents, then (1) PSNH shall, at the request of the Lender if only one Lender exists or, if more than one Lender exists, at the request of the Lead Lender, continue to perform all of its obligations hereunder, and Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender or its nominee may perform in the place of Seller, (2) Lenders shall have no liability under this Agreement except during the period of any such Lender's ownership or operation of the Facility and (3) PSNH shall accept performance in accordance with this Agreement by Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender or its nominee; and (d) that PSNH shall make representations and warranties to the Lender if only one Lender exists or, if more than one Lender exists, the Lead Lender for the benefit of the Lenders as may be reasonably requested with regard to (A) PSNH's existence, (B) PSNH's authority to execute, deliver and perform this Agreement, (C) the binding nature of the document evidencing PSNH's consent to assignment to Lender and this Agreement on PSNH and (D) receipt of regulatory approvals by PSNH with respect to its execution and performance under this Agreement.

## ARTICLE 25. SURVIVABILITY

**25.1** This Agreement shall survive termination, expiration, cancellation, suspension, or completion of the agreements set forth herein to the extent necessary to allow for final

accounting, final billing, billing adjustments, resolution of any billing dispute, resolution of any court or administrative proceeding and final payments. All indemnity defense and hold harmless obligations and billing verification rights shall survive for two (2) years beyond the applicable terms and confidentiality obligations shall survive as provided in Section 16.2.

## ARTICLE 26. FORWARD CONTRACT

**26.1** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

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IN WITNESS WHEREOF, the Parties, each by its duly authorized representative(s), have hereunto caused their names to be subscribed, as of the day and year first above written.

LEMPSTER WIND, LLC

By: _____

Name: Eric Blank

Title: Manager

By: _____

Name: Pablo Canales Abaitua

Title: Manager

Duly Authorized

IBERDROLA

DEC 20 2007

VISADO LEGAL

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: ~~John M. MacDonald~~ Gary A. Long

Title: ~~Vice President - Energy Delivery and Generation~~
President and Chief Operating Officer

Duly Authorized