

EXHIBIT

#5
DE 19-142

ATTACHMENT 1

FIRST AMENDMENT TO AMENDED AND RESTATED
POWER PURCHASE AGREEMENT

November 19, 2019

**FIRST AMENDMENT TO AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

This **FIRST AMENDMENT TO THE AMENDED AND RESTATED POWER PURCHASE AGREEMENT** (this "First Amendment") is entered into as of November 19, 2019, by and between PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE ("PSNH"), and BERLIN STATION, LLC ("Berlin Station"). PSNH and Berlin Station are individually referred to herein as a "Party" and are collectively referred to herein as the "Parties."

WHEREAS, PSNH and Berlin Station executed that certain Amended and Restated Power Purchase Agreement, dated as of May 18, 2011 (the "Agreement").

WHEREAS, in 2018 N.H. Laws, Chapter 340 (a.k.a. SB 577), the Legislature enacted into law the finding that, "The general court finds that the continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability." *See*, Section 340:1.

WHEREAS, 2018 N.H. Laws, 340:2,I required the New Hampshire Public Utilities Commission to "amend its Order No. 25,213 (Docket DE 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect."

WHEREAS, by Order No. 26,198 dated December 5, 2018, the New Hampshire Public Utilities Commission amended its Order No. 25,213 to include the following provision: "Amendment made December 5, 2018, as required by Laws of 2018, ch.340: Operation of the cap shall be suspended for three years from the date on which the cumulative amount reaches \$100 million."

WHEREAS, PSNH and Berlin Station desire to amend the Agreement as provided herein to effectuate the findings of the general court and the action of the New Hampshire Public Utilities Commission.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

Any capitalized terms used in this First Amendment and not defined herein shall have the same meaning as ascribed to such terms in the Agreement.

2. AMENDMENTS

- (a) Section 6.1.4(c) of the Agreement shall be restated as follows:

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1. DEFINITIONS

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2. AMENDMENTS

- (a) Section 6.1.4(c) of the Agreement shall be restated as follows:

Notwithstanding Section 6.1.2 above, beginning with the Operating Year ending on November 30, 2022, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars (\$100,000,000), such excess (“Excess Cumulative Reduction”) will be credited against amounts otherwise due for Energy delivered to PSNH during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction (“Monthly Energy Credit”) shall be deducted by PSNH from the Seller’s invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by PSNH from the Seller’s invoice in the next Operating Year in the same manner described above. If upon expiration of the Term PSNH does not purchase the Facility, Seller shall pay PSNH the amount of any Excess Cumulative Reduction.

(b) **PROPERTY TAX RESOLUTION**

To resolve an outstanding matter regarding amounts owed by Berlin Station (“Seller”) to PSNH (“Buyer”) for real property in the City of Berlin subject to that city’s assessment of property taxes, a new Section 9.10 shall be included in the Agreement as follows:

Pursuant to Section 12.4 of the “Standard Large Generator Interconnection Agreement” (“LGIA”) pertaining to Berlin Station, the parties agree to resolve a billing dispute in the following manner. Per the LGIA, Seller is responsible for reimbursing Buyer for property taxes allocable to the Generator Interconnection Related Upgrade (“GIRU”). For purposes of allocating property taxes assessed upon Buyer by the City of Berlin, this allocation shall be made by multiplying the total taxes assessed by the City by the percentage that the net book value of the GIRU facilities represents to the Buyer’s total net book value of assets subject to property taxation by the City. Notwithstanding the provisions of the LGIA, any determination whether the assessment of taxes by the City should be challenged or abated shall be made solely by Buyer and the costs of any such challenge or abatement request will be borne solely by Buyer. In the event that any such challenge or abatement results in a reduction to the taxes assessed on the Buyer’s property by the City, the Seller shall receive its proportionate share of such tax reduction in the same manner as taxes were originally allocated. Buyer shall provide Seller with an invoice statement annually stating the amount of the tax and any applicable abatement reductions. Property taxes or credits due and owing to Buyer under this provision shall be collected by Buyer by deductions or credits by Buyer from or to the Seller’s invoices for Energy purchased under the Agreement. Property taxes or credits due will be divided into appropriate monthly

payments, with each such monthly payment deducted from or credited to Seller's respective monthly invoices for Energy. In the event that Energy charges are not sufficient to offset the full amount of tax payments due to Buyer, Seller shall promptly pay the amount due upon receipt of an invoice from Buyer.

3. MISCELLANEOUS

(a) Per RSA 374:57, PSNH must furnish a copy of this First Amendment to the New Hampshire Public Utilities Commission upon its execution. This First Amendment is conditioned upon and shall not become effective unless and until the New Hampshire Public Utilities Commission approves this First Amendment without material modification or conditions with findings that PSNH's decision to enter into this First Amendment is reasonable and in the public interest, and that PSNH shall be allowed to recover all costs of the amended Agreement from customers via a non-bypassable rate mechanism; which approval shall be final and not subject to appeal or rehearing and shall be acceptable to PSNH in its sole discretion (the "Amendment Regulatory Approval").

(b) Except as herein provided, the Agreement shall remain unchanged and in full force and effect. On and after the date the Amendment Regulatory Approval becomes final (as set forth in (a), above), this First Amendment shall constitute a part of the Agreement and every reference in the Agreement to the term "Agreement" shall be deemed to mean the Agreement, as amended by this First Amendment.

(c) If this First Amendment becomes final after December 1, 2019, then the total amount of any Monthly Energy Credits that have been deducted from Seller's invoices during thirty-six (36) months following the initial occurrence of the Excess Cumulative Reduction shall be refunded to Seller and the amount of such refund shall be added to the Cumulative Reduction fund balance.

(d) This First Amendment may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties.

(e) If any term or provision of this First Amendment or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this First Amendment and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law so long as all essential terms and conditions of this First Amendment for both Parties remain valid, binding and enforceable and have not been declared to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction.

(f) Any number of counterparts of this First Amendment may be executed, and each shall have the same force and effect as an original. Facsimile signatures hereon or on any notice or other instrument delivered under this First Amendment shall have the same force and effect as original signatures.

(g) Interpretation and performance of this First Amendment shall be in accordance with, and shall be controlled by, the laws of the State of New Hampshire (without regard to its principles of conflicts of law).

(h) This First Amendment shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties permitted under the Agreement.

IN WITNESS WHEREOF, each of PSNH and Berlin Station has caused this First Amendment to be duly executed on its behalf as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By:

A blue ink signature of "James G. Daly" is written over a horizontal line.

Name: James G. Daly
Title: VP, Energy Supply

BERLIN STATION, LLC

By: _____

Name: _____

Title: _____

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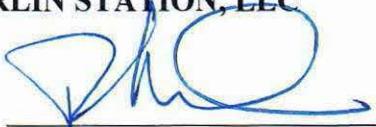
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

BERLIN STATION, LLC

By: 

Name: Robert Desrosiers

Title: Director