

Orr&Reno

Professional Association

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March 28, 2007

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Debra A. Howland, Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
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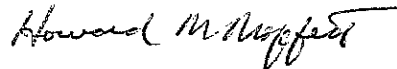
Re: *Briar Hydro Associates' Petition for Declaratory Ruling*

Dear Ms. Howland:

Enclosed please find the original and seven copies of Briar Hydro Associates' Petition for Declaratory Ruling Re 1982 Power Sale Contract with Public Service Company of New Hampshire. An electronic copy of this petition has been filed with your office today c/o jody.carmody@puc.nh.gov, and copies have been forwarded via first class US mail to Attorneys Robert Bersak and Gerald Eaton, as well as Consumer Advocate Hatfield.

Thank you for your assistance in this matter.

Very truly yours,



Howard M. Moffett

HMM:cmd

Enclosure

cc: Robert A. Bersak, Esquire
Gerald M. Eaton, Esquire
Consumer Advocate Meredith Hatfield, Esquire
Richard A. Norman, Briar Hydro Associates

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Briar Hydro Associates' Petition for Declaratory Ruling
Re 1982 Power Sale Contract with Public Service Company of New Hampshire

NOW COMES Briar Hydro Associates, a New Hampshire limited partnership with a principal place of business at 2 Commercial Street, Boscawen, New Hampshire 03303 ("Briar"), and petitions the Commission to determine, in an adjudicative proceeding under PUC Rule 207.01 and Part PUC 203, which party is entitled to market payments for "capacity" based on a "Contract for the Purchase and Sale of Electric Energy" between New Hampshire Hydro Associates (Briar's predecessor-in-interest) and Public Service Company of New Hampshire ("PSNH"), dated April 28, 1982.

Briar respectfully represents as follows:

A. Factual Background

1. Briar is the successor-in-interest to New Hampshire Hydro Associates, a New Hampshire limited partnership ("NHHA"), as owner and operator of the Penacook Lower Falls Project, a 4.1 MW hydroelectric generating facility on the Contoocook River in Penacook and Boscawen, New Hampshire.

2. NHHA developed the Penacook Lower Falls Project in the early 1980s, and entered into a "Contract for the Purchase and Sale of Electric Energy" with PSNH on April 28,

1982 (the "Contract," attached as Appendix 1). Under Article 1 of the Contract, NHHA agreed to sell "all of the electric energy produced by" the Penacook Lower Falls Project to PSNH for a term of 30 years, at a variable price based on an index price of 9.0 cents/kwh.

3. On June 28, 2002, Briar purchased the Penacook Lower Falls Project, including all its tangible and intangible assets, from NHHA. Briar succeeded to NHHA's rights and obligations under the Contract by virtue of an assignment and assumption agreement to which PSNH consented.

4. Briar has continued to sell, and PSNH has continued to purchase, all of the electric energy produced at the Penacook Lower Falls Project, through the date of this petition. Under the price formula in Article 3 of the Contract, Briar is currently receiving 3.53¢/kwh for energy sold to PSNH. See the December 2006 Penacook Lower Falls invoice attached as Appendix 2.

5. An issue has arisen between Briar and PSNH over which of them, given the provisions in the Contract, is entitled to payments for "capacity" arising under a June 16, 2006 order of the Federal Energy Regulatory Commission ("FERC"), which established a "Forward Capacity Market" ("FCM") for existing and new generators of electric power in New England and provided for "transition payments" to existing generators beginning in December, 2006 (the "FCM Order"). PSNH has taken the position that transition and capacity payments accruing to projects with "9 cent contracts" under the FCM Order, including Briar's Penacook Lower Falls Project, belong to PSNH. (See fourth paragraph of November 7, 2006 e-mail from PSNH Vice President John MacDonald to Richard Norman, an officer of Briar, attached as Appendix 3). For its part, Briar believes that it is entitled to all transition and capacity payments accruing to the Penacook Lower Falls Project under the FCM Order, for the reasons set forth in Mr. Norman's

November 27, 2006 response to Mr. MacDonald, attached hereto as Appendix 4, and Part B below.

6. Because of the Commission's unique regulatory expertise in this area, and its familiarity with the history and development of power purchase contracting in New Hampshire, Briar respectfully petitions the Commission to determine and declare whether Briar or PSNH is entitled to capacity payments accruing to the Penacook Lower Falls Project under the FCM Order, including both the transition payments which began on December 1, 2006 and will end on May 31, 2010, and any Forward Capacity Auction ("FCA") payments to which the project may be entitled when the FCM goes into effect on June 1, 2010.

7. Briar has summarized its position below for the Commission's benefit. Briar believes this issue can be decided without extensive evidentiary hearings, on the basis of written pleadings and exhibits, including notably the attached Contract, and the parties' written explanations of their positions on the issue of contract interpretation. However, Briar would certainly be willing to participate in more extensive hearings should PSNH request them and/or the Commission decide that they would be helpful in resolving this issue.

B. Briar's Position

Briar believes it is entitled to all capacity payments accruing to the Penacook Lower Falls Project under the FCM Order through the remaining term of the Contract, for the following reasons:

1. The Contract (Appendix 1) is a "Contract for the Purchase and Sale of Electric Energy" (emphasis added). It does not mention "capacity".

a. The recitals in the Contract note that Seller is “engaged in the business of generation of electrical energy,” and that PSNH wishes to “secure a reliable supply of electrical energy” for a period of at least 30 years (emphasis added).

b. Article 1 of the Contract provides that “Seller agrees to furnish and sell and PSNH agrees to purchase and receive all of the electrical energy produced by the Penacook Lower Falls generating facility” under the terms of the Contract (emphasis added).

c. Article 3 of the Contract specifies that the price charged by the Seller (now Briar) is for “sales of electric energy,” and is to be based ultimately on PSNH’s “incremental energy costs,” i.e., PSNH’s “marginal cost of providing energy for that hour.” PSNH’s cost of providing capacity is not taken into account in setting the Contract price, nor is Briar’s cost of providing such capacity (Article 3, Paragraphs A.2 and B).

d. Nowhere in the Contract is the word “capacity” used.

2. Participants in the electric industry in New Hampshire were generally aware of the distinction between “energy” and “capacity” well before NHHA and PSNH entered into the Contract on April 28, 1982, as evidenced by a series of orders and decisions issued by FERC at the federal level and by this Commission in New Hampshire.

a. On February 19, 1980, in Order No. 69 in Docket RM79-55, FERC issued its Final Rule implementing Section 210 of the Public Utility Regulatory Policies Act of 1978. Order No. 69 distinguished between “energy” and “capacity” throughout. In Section III, §292.101 of its Section-by-Section Analysis, FERC explained the difference between avoided costs for “energy” (variable costs associated with the production of electric energy in kilowatt-hours, generally comprising the cost of fuel and some operating and maintenance expenses), and

“capacity” (capital costs associated with providing the capability to deliver energy). See also 18 CFR §292.302 (b)(1) and (3); 18 CFR §292.303(a) and (d); and 18 CFR §292.304(d)(2).

b. In a series of orders governing purchases of energy and capacity from qualifying small power producers (“QF’s”) by franchise utilities in New Hampshire, this Commission recognized the distinction between energy and capacity as early as April, 1979. See, e.g.:

- (1) Order No. 13,589 in DE 78-232, April 18, 1979, setting rates of 4¢/kwh for purchases of energy from QF’s without dependable capacity and 4.5¢/kwh for purchases of energy from QF’s with dependable capacity;
- (2) Order No. 13,744 in DE 78-232, July 23, 1979, providing for capacity audits of QF’s by Commission engineers;
- (3) Order No. 14,280 in DE 79-208, June 18, 1980, setting rates of 7.7¢/kwh for energy-only and 8.2¢/kwh for energy from QF’s with reliable (audited) capacity (in particular, see the Commission’s discussion of the distinction between sales of energy only and sales of energy plus capacity, at 65 NHPUC 291, 297-8);
- (4) Order No. 14,797 in DE 80-246, March 20, 1981, requiring QF’s seeking to sell capacity as well as energy to purchase such metering equipment as the purchasing utility determines is reasonably required.

3. The invoices for power produced at Briar’s Penacook Lower Falls Project (which are prepared by PSNH) are invoices for energy only, expressed in cents per kilowatt-hour. They do not include any charge for capacity. See Appendix 2.

4. By contrast with its claim for capacity payments accruing to the Penacook Lower Falls Project under the FCM Order, Briar acknowledges that those small power producers with

long-term rate orders issued by the Commission would have no claim to capacity payments under the FCM Order, since PSNH is purchasing their capacity (in dollars per kw-year) as well as their energy (in cents per kw-hour) at the separate rates set by the Commission for energy and capacity in Order No. 17, 104 in DE 83-62, issued on July 5, 1984.

5. If PSNH had intended to bargain for the purchase of capacity as well as energy, it knew how to do so. For example, on August 21, 1980, more than a year before the date of the NHHA Contract, PSNH entered into an "Agreement for the Purchase and Sale of Hydroelectric Energy" with Rollinsford Manufacturing Co., Inc. The Rollinsford contract clearly contemplated the purchase of capacity as well as energy. Article 3 establishes separate prices for "each KW of dependable capability generated during an hour," and "each KW generated during an hour in excess of the dependable capability," based on a temporary determination of dependable capability by the NHPUC until an annual audit of capacity could be completed, and thereafter based on the annual audit – all in accordance with Commission Order Nos. 13,938 and 14,133. No such provisions were included in the NHHA Contract of April 28, 1982.

WHEREFORE, Briar Hydro Associates respectfully petitions the Commission to review the facts alleged in this petition and the attached Contract, consider the arguments advanced by the respective parties, and determine whether Briar or PSNH shall be entitled to payments associated with "capacity" under the FCM Order, including both transition payments and FCA payments, with respect to the Penacook Lower Falls Project.

Respectfully submitted,

BRIAR HYDRO ASSOCIATES

By its Attorneys,

ORR & RENO, P.A.
One Eagle Square
P.O. Box 3550
Concord, N.H. 03302-3550

By: Howard M. Moffett
Howard M. Moffett
Telephone: 603-223-9132
Email: hmoffett@orr-reno.com

Dated: March 28, 2007

VERIFICATION

I, the undersigned Howard M. Moffett, attorney for Briar Hydro Associates, hereby verify in accordance with PUC Rule 207.01(b) that the facts represented in the foregoing petition are true and the documents attached as appendices are accurate and complete copies of the originals, to the best of my knowledge and belief.

Howard M. Moffett
Howard M. Moffett

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS.


On this 28th day of March, 2007, personally appeared before me the above-named Howard M. Moffett, and affirmed under oath that the factual representations in the foregoing petition are true and the documents appended thereto are accurate and complete copies of the originals, to the best of his knowledge and belief.

Christine M. Dasey
Notary Public/Justice of the Peace

CHRISTINE M. DASEY
Notary Public - State of New Hampshire
My Commission Expires July 19, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing petition have been sent this 28th day of March, 2007, to Attorneys Robert Bersak and Gerald Eaton at Public Service Company of New Hampshire, and to the Office of Consumer Advocate.


Howard M. Moffett

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Appendix 1

CONTRACT FOR THE PURCHASE AND SALE
OF ELECTRIC ENERGY

CONTRACT, dated April 28, 1982, by and between NEW HAMPSHIRE HYDRO ASSOCIATES, a New Hampshire Limited Partnership, with its principal office in Concord, New Hampshire (hereinafter referred to as 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 PUBLIC SERVICE).

WHEREAS, SELLER is engaged in the business of generation of electrical energy,

WHEREAS, SELLER desires to sell its entire generation output to PUBLIC SERVICE,

WHEREAS, PUBLIC SERVICE is engaged in the business of the generation, transmission, and distribution of electrical energy,

WHEREAS, PUBLIC SERVICE has determined it would be beneficial to secure a reliable supply of electrical energy for a period of not less than thirty years,

WHEREAS, SELLER is willing and able to sell its entire output to PUBLIC SERVICE for thirty years;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, SELLER and PUBLIC SERVICE hereby agree as follows:

Article 1. Basic Agreement.

Subject to the terms, provisions, and conditions of this Contract, SELLER agrees to furnish and sell and PUBLIC SERVICE agrees to purchase and receive all of the electric energy produced by the Penacook Lower Falls hydroelectric generating facility owned and operated by SELLER located in Penacook-Boscawen, New Hampshire on the Contoocook River. Since SELLER and PUBLIC SERVICE are interconnected through the system of the Concord Electric Company, PUBLIC SERVICE's obligation to purchase energy hereunder is conditioned upon SELLER obtaining the right to transmit power through the Concord Electric Company system to PUBLIC SERVICE and SELLER shall pay the cost, if any, of such transmission.

The point of delivery from the Concord Electric Company to PUBLIC SERVICE shall be the Garvins Substation metering point located in Bow, New Hampshire.

Article 2. Availability.

During the term hereof, SELLER shall endeavor to operate its generating unit to the maximum extent reasonably possible under the circumstances and shall make available to PUBLIC SERVICE the entire net output in kilowatthours from said unit when in operation.

It is agreed that SELLER shall have sole responsibility for operation and maintenance of its generating unit, including any relays, locks, seals, breakers, and other control and protection apparatus that are necessary, or which Concord Electric Company may designate as being necessary, for the operation of SELLER's generating unit in parallel with the system of Concord Electric Company and that SELLER will maintain said generating unit in good operating order and repair without cost to PUBLIC SERVICE.

Article 3. Price.

The price charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract shall be based on an index price of 9.00 cents per kilowatthour (KWH) and shall be determined as follows.

- A. For the first eight (8) years of the Contract, the Contract rate shall be 11.00 cents per KWH. This rate exceeds the index price by 2.00 cents per KWH; and all payments made by PUBLIC SERVICE to SELLER which exceed the index price must be recovered by PUBLIC SERVICE, during later Contract years, in accordance with Section D.1., Article 3. This rate is subject to the adjustment provided for under Section D.2., Article 3. The provisions of Section C, Article 3, shall not override the provisions of this paragraph.
- B. If, during the first eight Contract years, 96 percent of PUBLIC SERVICE's incremental energy costs has not exceeded the index price, the Contract rate beginning with the ninth contract year shall be the index price of 9.00 cents per KWH; and this rate shall remain in effect until superceded by the provisions of Section C, Article 3. This rate is subject to the adjustment provided for under Section D.2., Article 3.

- C. At such time that 96 percent of PUBLIC SERVICE's incremental energy cost exceeds the index, the rate to be paid under this contract will vary in accordance with the following provisions, subject to the provisions of Section D, Article 3.

As soon as 96 percent of PUBLIC SERVICE's incremental energy cost exceeds the index, the contract rate will be based on 96 percent of PUBLIC SERVICE's incremental energy cost for a period of one year. For each subsequent year, the percentage of PUBLIC SERVICE's incremental energy cost to be paid will be reduced by 4 percent (i.e. 96 percent, 92 percent, 88 percent, 84 percent, etc.), until the incremental energy cost is reduced only 2 percent to reach 50 percent of PUBLIC SERVICE's incremental energy cost. At such time, the contract rate will remain at the 50 percent rate for the remainder of the contract term.

PUBLIC SERVICE's incremental energy cost, for any hour, is equivalent to the marginal cost of providing energy for that hour. The marginal cost, for any hour, is the energy cost of the most expensive unit or purchased energy supplying a portion of PUBLIC SERVICE's load during that hour and includes all costs in the New England Power Exchange (NEPEX) bus rate cost for the incremental unit. The NEPEX bus rate costs are essentially the cost of fuel consumed. PUBLIC SERVICE's incremental energy cost, for the purposes of this Contract, will be expressed as a yearly average and will be calculated by averaging all 8,760 hourly incremental energy costs over the calendar year.

If the rate during any year is less than the appropriate percentage of PUBLIC SERVICE's incremental energy cost for that year, an adjustment will be made for all energy sold to PUBLIC SERVICE. The adjustment will consist of an additional payment for each KWH sold to PUBLIC SERVICE during said year based on the difference between the price paid and the appropriate percentage of PUBLIC SERVICE's incremental energy cost. The adjustment will be paid within one month after PUBLIC SERVICE's incremental energy cost for the previous year has been determined.

If the rate during any year is more than the appropriate percentage of PUBLIC SERVICE's incremental energy cost for that year, an adjustment will be made for all energy sold to PUBLIC SERVICE. The adjustment will consist of a refund to PUBLIC SERVICE for each KWH sold during said year based on the difference between the price paid and the appropriate percentage of PUBLIC SERVICE's incremental energy cost. The refund will be made to PUBLIC SERVICE by applying one-twelfth of the total amount as a reduction to each month's payment by PUBLIC SERVICE during the current year. If for any month, no payment is due the SELLER, or the payment due is not equal to the refund, a payment to PUBLIC SERVICE will be made by SELLER so that the total recovery is achieved by PUBLIC SERVICE by the end of the current year.

- D. The Contract rates described in Sections B and C, Article 3, are subject to the following provisions, in order to determine the Contract price to be charged by SELLER to PUBLIC SERVICE for sales of electric energy under this Contract.
1. Beginning with the ninth Contract year, and continuing for the term of the Contract, a recovery amount equal to 5.47 cents per KWH shall be deducted from the Contract rate. This deduction allows PUBLIC SERVICE to recover the payments made under Section A, Article 3, which exceeded the index price.
 2. For the first eight Contract years, the Contract rate shall be adjusted by subtracting 1.00 cents per KWH from the rate. For the ninth through the twentieth Contract years, the Contract rate shall be adjusted by adding 0.67 cents per KWH to the rate. The total of said additional payments, for any given year, shall not exceed one-twelfth (1/12) of the money subtracted during the first eight Contract years.

If proven necessary to PUBLIC SERVICE by SELLER and/or the project lenders, for amortization of the first cost of SELLER's facilities, PUBLIC SERVICE shall grant SELLER the option to extend the pricing under Section A, Article 3 through the ninth or tenth Contract year. If said pricing is extended through the ninth Contract year, the recovery amount under Section D.1., Article 3 shall be 6.84 cents per KWH and the recovery shall begin with the tenth Contract year; if said pricing is extended through the tenth Contract year, the recovery amount shall be 8.46 cents per KWH beginning with the eleventh Contract year.

5.47
1/12

Article 4. Metering.

The metering shall be configured so as to represent the generation delivered to PUBLIC SERVICE. The metering may be installed on the generation side of the transformer provided that transformer losses are subtracted from the measured generation by a suitable method.

SELLER will install, own, and maintain all metering equipment as specified in PUBLIC SERVICE's study of the SELLER's electric generating facility, which study is, or will be upon mutual consent of both parties, attached hereto as Attachment A. SELLER shall bear all costs associated with said equipment and its installation.

If at any time, the metering equipment is found to be in error by more than two percent fast or slow (+ or -2%), SELLER shall cause such metering equipment to be corrected and the meter readings for the period of inaccuracy shall be adjusted to correct such inaccuracy so far as the same can be reasonably ascertained, but no adjustment prior to the beginning of the preceding month shall be made except by agreement of the parties. All tests and calibrations shall be made in accordance with Section V-14 of the NHPUC Rules and Regulations Prescribing Standards for Electric Utilities in effect as of September 8, 1972, as amended. The meter shall be tested as prescribed in said Rules and Regulations.

In addition to the regular routine tests, SELLER shall cause the metering equipment to be tested at any time upon request of and in the presence of a representative of PUBLIC SERVICE. If such equipment proves accurate within two percent fast or slow (+ or -2%), the expense of the test shall be borne by PUBLIC SERVICE.

The SELLER shall allow PUBLIC SERVICE reasonable access to the meter located on the SELLER's premises. PUBLIC SERVICE reserves the right to secure or seal the metering installation, to require SELLER to measure electrical energy sold to PUBLIC SERVICE on an hour-by-hour basis, and to require SELLER to notify PUBLIC SERVICE once each day of SELLER's generation in kilowatthours for each hour during the prior 24 hours.

Article 5. Modifications.

If SELLER plans any modifications to its electric generating facility, SELLER shall give PUBLIC SERVICE prior written notice of its intentions. In the event that PUBLIC SERVICE reasonably determines that said modifications would necessitate changes to the metering equipment or would cause PUBLIC SERVICE to incur additional expenses associated therewith, the SELLER shall make such changes as reasonably required by PUBLIC SERVICE and reimburse PUBLIC SERVICE for said expenses before PUBLIC SERVICE is obligated to purchase any increased output.

If the interconnecting circuit is converted to a higher voltage in the future, the SELLER shall be responsible for all metering changes necessitated by the conversion and shall bear all costs associated with said conversion.

Article 6. Billing & Payment.

PUBLIC SERVICE shall read the meter, installed in accordance with Article 4, on or at the end of each month, and PUBLIC SERVICE shall send the SELLER a form showing the month's beginning and ending meter readings and total net kilowatthour generation.

SELLER shall then transmit to PUBLIC SERVICE a bill showing the amount due, which amount will be determined by multiplying the rate per kilowatthour specified in Article 3 times the number of kilowatthours delivered to PUBLIC SERVICE since the prior reading of the meter, and PUBLIC SERVICE will send to SELLER a payment for that amount within 20 days of receipt of SELLER's bill.

Article 7. Liability & Insurance.

- a. Each party will be responsible for its facilities and the operation thereof and will indemnify and save the other harmless from any and all loss by reason of property damage, bodily injury, including death resulting therefrom suffered by any person or persons including the parties hereto, employees thereof or members of the public, (and all expenses in connection therewith, including attorney's fees) whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, caused by or sustained on, or alleged to be

caused by or sustained on, equipment or facilities, or the operation or use thereof, owned or controlled by such party, except that each party shall be solely responsible for and shall bear all costs of claims by its own employees or contractors growing out of any workmen's compensation law. SELLER shall indemnify and save PUBLIC SERVICE harmless against any and all liability for claims, costs, losses, expenses and damages, including bodily injury and death, sustained by Concord Electric Company, its employees or agents, arising out of SELLER's performance of this Contract.

- b. SELLER hereby agrees to maintain in force and effect, for the duration of this Contract, Workmen's Compensation Insurance, as required by statute, and Comprehensive General Liability Insurance for bodily injury and property damage at minimum limits of three million dollars (\$3,000,000). Within sixty days of the effective date of this Contract, the SELLER agrees to provide PUBLIC SERVICE with a certificate of such insurance.
- c. In no event shall PUBLIC SERVICE be liable, whether in Contract, tort (including negligence), strict liability, warranty, or otherwise, for any special, indirect, incidental, or consequential loss or damage, including but not limited to cost of capital, cost of replacement power, loss of profits or revenues or the loss of the use thereof. This provision, subsection c of Article 7, shall apply notwithstanding any other provision of this Contract.

Article 8. Force Majeure.

Either party shall not be considered to be in default hereunder and shall be excused from purchasing or selling electricity hereunder if and to the extent that it shall be prevented from doing so by storm, flood, lightning, earthquake, explosion, equipment failure, civil disturbance, labor dispute, act of God or the public enemy, action of a court or public authority, withdrawal of facilities from operation for necessary maintenance and repair, or any cause beyond the reasonable control of either party.

Article 9. Effective Date & Contract Term.

This Contract shall become effective between the parties as of the date hereof, provided that the metering equipment, as specified by PUBLIC SERVICE in accordance with the conditions set forth in Section 4 of this Contract, has been installed by SELLER.

If said equipment has not been properly installed, this Contract shall become effective between the parties as of the date of proper installation of said equipment or as of the date SELLER begins delivering energy to PUBLIC SERVICE, whichever occurs latest. As of the effective date of this Contract, the Contract shall remain in full force and effect for thirty (30) years.

In order for any modification to this Contract to be binding upon the parties, said modifications must be in writing and signed by both parties.

Article 10. Prior Agreements Superseded.

This Contract with Attachment A represents the entire agreement between the parties hereto relating to the subject matter hereof, and all previous agreements, discussion, communications, and correspondence with respect to the said subject matter are superseded by the execution of this Contract.

Article 11. Waiver of Terms or Conditions.

The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Contract shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Article 12. General.

This Contract shall be binding upon, and inure to the benefit of the respective successors and assigns of the parties hereto, provided that SELLER shall not assign this Contract except to an affiliated company, without the prior written consent of PUBLIC SERVICE, which consent shall not be unreasonably withheld. The term "affiliated company" shall include any partnership in which SELLER or one of SELLER's subsidiaries or affiliates is a general partner or any corporation in which SELLER or one of its subsidiaries or affiliates owns or controls more than 50 percent of the voting stock or otherwise has operating control. In the event of an assignment to an affiliate, SELLER shall notify PUBLIC SERVICE within five (5) days of the effective date of the assignment.

Article 13. Applicable Law.

This Contract is made under the laws of The State of New Hampshire and the interpretation and performance hereof shall be in accordance with and controlled by the laws of that State.

Article 14. Mailing Addresses.

The mailing addresses of the parties are as follows:

SELLER: New Hampshire Hydro Associates
99 North State Street
Concord, New Hampshire 03301
Attn: Richard A. Norman, Partner

PUBLIC SERVICE: Public Service Company of New Hampshire
1000 Elm Street
P.O. Box 330
Manchester, New Hampshire 03105
Attn: Henry J. Ellis, Vice President

IN WITNESS WHEREOF, the parties have hereunto caused their names to be subscribed, as of the day and year first above written.

NEW HAMPSHIRE HYDRO ASSOCIATES
By ESSEX DEVELOPMENT ASSOCIATES,
A General Partner

John E. Lyons
(Witness)

By: Richard A. Norman
Name: Richard A. Norman
Title: Partner

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

John E. Lyons
(Witness)

By: Henry J. Ellis
Henry J. Ellis, Vice President

SMALL POWER PRODUCER GENERATION

Appendix 2



Public Service
of New Hampshire

Public Service of New Hampshire
Supplemental Energy Sources Department
PO Box 330
Manchester, NH 03105-0330

Penacook Lower Falls

SESD # 055
Billing Period: December 2006

New Hampshire Hydro Assoc
c/o Essex Hydro Assoc.
55 Union Street 4th Floor
Boston, MA 02108

Invoice Date 01/03/2007
Expected Payment Date 01/25/2007
Account # 8808160
Tel # 617-367-0032
Fax # 617-367-3796

Delivery Period: 12/01/2006 through 01/02/2007

Energy Component:

Meter Readings

	Total
Present Reading	17,921
<u>Previous Reading</u>	<u>17,057</u>
Difference	864
<u>Multiplier</u>	<u>3,500</u>
Total	3,024,000

Total Kwhrs Delivered 3,024,000

Energy Rate Calculations

	Energy (Kwhrs)	Rate	
1	3,024,000	3.53 ¢/Kwhr	\$ 106,747.20
2	0	.00 ¢/Kwhr	\$ 0.00
Total Kwhrs	3,024,000	Energy Payment	\$ 106,747.20

Adjustments \$ 0.00
Translation Fee \$ 0.00

Total Payment Due \$ 106,747.20

Notes None.

Approved by Daniel Kozyn

Date: 1/8/07

Please Approve and Submit this Invoice to:

Danielle Martineau
PSNH, PO Box 330
Manchester, NH 03105-0330

nwl
1/21/07

Please contact Diane Cecchetti at PSNH (603-634-2888), FAX (603-634-2449) with questions.

Subject: Policy on FCM payments.
From: macdojm@NU.COM
Date: Tue, 7 Nov 2006 13:03:52 -0500
To: rnorman@essexhydro.com
CC: wickesb@NU.COM

Dick,

You requested clarification on when and how FCM payments would be handled for QF interconnected suppliers. Listed below is how we see the framework of the FCM payments as we head into this new area of wholesale market changes. We are not yet sure of all the ISO FCM administration procedures, and how they will make these payments, but we communicate this information as we receive it:

Rate Orders - energy rates and capacity payments are specifically stated in each rate order. Therefore any FCM payments are retained for PSNH customers.

Short Term Purchases - Deregulation legislation states that PSNH would pay for short term purchases from QF's under PURPA at the market price for sales into ISO, adjusted by line losses, wheeling costs and administrative structure costs. PURPA considers QF sales as both energy and capacity, ie when we buy power from a QF under PURPA we always buy both the energy and capacity. The short term energy rate is considered the hourly real time (not day ahead) energy price for the NH zone. Capacity is paid at the value PSNH is credited for the Plant's capacity in PSNH's ISO settlement account, however up to now no real "monthly capacity market" has existed. Therefore we have not paid and won't pay a capacity component of short term rates until the new ISO capacity market starts in December. Therefore FCM payments will be passed thru and forwarded to the QF owner.

Other Power Purchase Contracts (the so called 9 cent contracts) - These contracts directly between PSNH and various projects dating from the early 1980's to the first rate orders were based loosely around an energy price of 9 cents/kw-hr. A number of slight variations existed but only a half dozen of these contracts still exist today. The contracts are silent on a capacity payment but within the contracts it was stated that the plants were delivering the entire electrical output. We interpret entire output as both energy and capacity as unbundling had not yet occurred, when this contracts were executed The plants have always received a fix rate for their output. As we view these contracts the entire electrical output included capacity. Therefore these contracts are not entitled to short term capacity payments starting in December.

Bilateral Purchases - These short term contracts are individually negotiated at prevailing foreseeable market rates, since they are individually negotiated they would have an energy component and a capacity component, that are indexed to the market. Therefore the owner would be entitled to receive FCM payments as negotiated under the contract.

Please feel free to contact me or Tod Wicker if there are any questions or concerns.
John.

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November 27, 2006

Mr. John M. MacDonald
Vice President - Energy Delivery and Generation
Public Service Company of New Hampshire
P.O. Box 330
Manchester, NH 03105

Re: New Hampshire Hydro Associates Power Sales Agreement dated April 28, 1982 -
Forward Capacity Payments

Dear Mr. MacDonald,

Briar Hydro Associates ("BrHA") is the successor in interest to New Hampshire Hydro Associates ("NHHA") and is the current owner of the Penacook Lower Falls Hydroelectric project ("the PLF project"). The electric energy (kwh) from this project is sold to Public Service Company of New Hampshire ("PSNH") pursuant to terms of a power sales agreement dated April 28, 1982 between NHHA and PSNH.

The purpose of this letter is to respond to an email which was sent to the Granite State Hydro Association concerning the policy PSNH intends to adopt concerning Forward Capacity Payments ("FCP") which are scheduled to commence on December 1, 2006. In your email you indicated that PSNH believes that the wording of nine cent contracts like the NHHA (BrHA) contract were intended to sell both energy and capacity and that any FCP payments received in connection with the PLF project would be payable to PSNH, not BrHA.

BrHA disagrees with this interpretation. BrHA believes the contract plainly states that the PLF project is selling only energy, measured in kilowatt hours, not capacity, which would be measured in kw or kw years, and that FCP from the PLF project should be payable to BrHA.

In an effort to resolve this disagreement in the most direct way possible BrHA suggests that BrHA and PSNH representatives meet informally with the NHPUC commission staff and obtain their interpretation of the contract (if they're willing to provide one). BrHA and PSNH then could assess their positions on this issue and hopefully come to a resolution of the matter. In the interim, BrHA assumes that any payment received by PSNH from the PLF project beginning December 1, 2006 will be paid in accordance with the final resolution of this matter.

Very truly yours,

BRIAR HYDRO ASSOCIATES

By: Essex Hydro Associates, L.L.C.
General Partner

Richard Norman
President

cc: T. Wickert
H. Moffett