DE 10-195

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. _____

Appeal of
Bridgewater Power Company, L.P., Pinetree Power, Inc.,
Pinetree Power-Tamworth, Inc., Springfield Power LLC,
DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and
Indeck Energy-Alexandria, LLC

APPENDIX TO

APPEAL BY PETITION PURSUANT TO RSA 541:6 (NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION) ("Appendix II")

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STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement) Docket No. DE 10-195
with Laidlaw Berlin BioPower, LLC)

WOOD-FIRED IPP'S MOTION FOR REHEARING

Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, DG Whitefield, LLC d/b/a Whitefield Power & Light Company, and Indeck Energy-Alexandria, LLC (collectively the "Wood-Fired IPPs") pursuant to RSA 541:3 and Puc 203.33, move the Commission for rehearing of the Commission's Order 25,213, Order Granting Conditional Approval (the "Approval Order").

INTRODUCTION

In the Approval Order the Commission found that the power purchase agreement ("PPA") with Laidlaw Berlin BioPower, LLC ("Laidlaw") submitted by Public Service Company of New Hampshire ("PSNH") for authorization and pre-approval of cost recovery was not in the public interest as defined in RSA 362-F:9, II, but that, if the PPA were properly conditioned, it would be substantially consistent with the statutory factors. Approval Order at 79 and 107. The Commission further ordered PSNH to submit a PPA that conforms to the terms of the Approval Order within 30 days. *Id.* at 107.

For the following reasons the Approval Order's conclusion that the conditioned PPA would meet the public interest is unlawful. First, it was error to imply a renewable energy certificate ("REC") purchase obligation in RSA 362-F:3 that extends beyond 2025. *See id.* at 74-76. Based upon this error, the Approval Order erroneously found that

"PSNH could reasonably project that the Class I renewable portfolio requirement for 2025 will continue in effect thereafter unless and until changed." *Id.* at 76. Second, the projection of PSNH's default service needs and purchase requirements contained in the Approval Order is based on the same conclusion, leading to the further error of conditionally approving a PPA that extends beyond the 2025 termination date of the renewable portfolio standard ("RPS") requirements. *See id.* at 79 and 107. Third, the Approval Order projects a REC requirement for PSNH in the early years of the PPA where none exists, by levelizing PSNH's REC purchase requirements over a 20-year period. The Approval Order then requires PSNH to purchase 400,000 RECs per year, more than PSNH requires for compliance during the early years of the PPA. *Id.* at 84-85 and 95. This condition is unlawful because, not only is there no authority to require ratepayers to fund REC purchases beyond the year 2025, when the RPS compliance requirement ends, there is no authority in RSA 362-F to levelize REC percentage requirements even within the remaining term of the RPS program or to require ratepayers to fund purchases in gross excess over the statutory percentages specified in RSA 362-F:3. Lastly, the Approval Order is unlawful because the Commission impermissibly waived its jurisdiction under RSA 365:28 by failing to place conditions on the change in law provisions of the PPA.

I. THE APPROVAL ORDER IS UNLAWFUL, UNJUST AND UNREASONABLE BECAUSE IT DETERMINES THAT THE RPS REC PURCHASE OBLIGATION EXTENDS BEYOND 2025, AUTHORIZES PSNH TO ENTER A REC PURCHASE AGREEMENT WITH A TERM EXTENDING BEYOND 2025, AND ALLOWS PSNH TO RECOVER FROM RATE PAYERS THE COST OF RECS ACQUIRED AFTER 2025.

A plain reading of RSA 362-F:3 demonstrates that, absent further legislative action, the RPS purchase obligation ends in 2025. The statute's legislative history

confirms this plain reading. The Approval Order is unlawful in ruling that a post-2025 REC obligation exists in RSA 362-F:3, in finding that PSNH could reasonably project that the Class I purchase requirement would continue in effect after 2025, in authorizing PSNH to enter a modified PPA with a term extending beyond 2025, and in pre-approving cost recovery for RECs to be purchased after 2025.

A. The Plain Reading of RSA 362-F:3 Demonstrates that, Absent Further Legislative Action, the REC Purchase Obligation Ends in 2025.

The Approval Order erred in concluding that RSA 362-F:3 "does not speak directly to the issue of whether the obligation to obtain and retire certificates [*i.e.*, RECs] persists beyond 2025." *See* Approval Order at 73 and 76. On its face, RSA 362-F:3 speaks directly and unambiguously to this issue.

RSA 362-F:3 creates and describes the extent of the RPS compliance obligation and sets forth the REC purchase obligation for each and every year of the RPS program. RSA 362-F:3 states "***For each year specified in the table below,*** each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customers ***that year.***" Emphasis supplied. RSA 362-F:3. This language precedes a table of specific years and specific percentages for the four classes of certificates. RSA 362-F:3 creates a purchase obligation only for the years specified in the table, at the percentages specified in the table. Because the table specifies only the years 2008 through 2025, and specifies no year or percentage purchase obligation beyond 2025, the plain and ordinary meaning of RSA 362-F:3 is that there is no certificate purchase obligation beyond 2025.

B. RSA 362-F:3 is Unambiguous With Regard to the End of the REC Purchase Obligation in 2025; Hence, It Was Error to Resort to Legislative History to Hold that a REC Purchase Obligation Exists Beyond That Year. Even so, the Legislative History Conclusively Demonstrates that the REC Purchase Obligation Ends in 2025.

Despite the unambiguous meaning of RSA 362-F:3, the Approval Order engages in a partial review of legislative history to imply an REC purchase obligation that persists beyond the date set in statute. Because there is no ambiguity in RSA 362-F:3, and because the plain meaning of RSA 362-F:3 can be harmonized with the remainder of the statute, it was error to resort to legislative history to interpret the intent of that provision. *Appeal of Verizon New England, Inc.*, 153 N.H. 50, 63 (2005), *citing DeLucca v. DeLucca*, 152 N.H. 100, 103 (2005); *see also Appeal of Public Service Company of New Hampshire*, 125 N.H. 46, 52 (1984); and *Petition of Public Service Co. of N.H.*, 130 N.H. 265, 282-83 (1988). Even assuming, for the sake of argument that an ambiguity exists, the legislative history of RSA 362-F demonstrates that the drafters of the RPS statute specifically intended to *remove* a continuing obligation from the statutory language, not to create one.

The legislative history of the RPS statute involves consideration of two bills, in two separate legislative sessions: 2006 and 2007. Senate Bill 314 was filed in the 2006 legislative session and did not become law. House Bill 873, filed in the 2007 legislative session, was modeled on SB 314 and became RSA 362-F.[1] See Exhibit 1. As originally

[1] According to the prime sponsor of House Bill 873, Rep. Suzanne Harvey:

> RPS is not new to the legislature. Last year I filed a bill in the House to establish a study committee that would look at an RPS for NH. Sen. Fuller Clark and others co-sponsored that bill. The senator sponsored a Senate bill to establish an RPS in the state. I joined others in co-sponsoring that bill.
>
> My study committee bill was the vehicle used in a committee of conference to establish the state Energy Policy Commission chaired by our colleague, Rep. Garrity. The Senate passed Sen. Fuller Clark's bill with an amendment so it could be forwarded to

introduced, Senate Bill 314 required the Commission to "establish a baseline that represents the minimum percentage of load of renewable energy resources that each electricity supplier must provide in year one of the program. The baseline requirement for each provider shall increase by an additional 0.5 percent in each year." Exhibit 2. The 2006 Senate subsequently amended this provision of Senate Bill 314. The version of SB 314 adopted by the Senate specified different percentage requirements, for each and every year of the program, for four different classes of certificates. As with RSA 362-F:3, these requirements were presented in the form of a table. The table in Senate Bill 314, as amended, described the yearly purchase obligation as follows:

	2007	2008	2009	2010	2011	2012	2013	*Thereafter*
Class IA+/or C	0.5%	1%	1%	1%	2%	3%	4%	4%
Class IB	0.01%	0.02%	0.04%	0.08%	0.15%	0.20%	0.30%	0.3%
Class IIA	3%	4%	5%	6%	6%	6%	6%	6%
Class IIB	1%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%

Exhibit 3. Emphasis supplied.

As can be seen from the table, the amended version of Senate Bill 314 would have created an RPS program of indefinite duration by specifying percentage requirements in a column of the table titled, "Thereafter," following the column of percentage requirements for the year 2013. This table would have held the percentages for the year 2013 constant

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the ST&E committee in the House, where it would receive more attention. It did not pass in the House.

Last year's bill has been thoroughly worked over and is a more complete bill. In addition this year, we have an economic impact study from UNH that you've received.

It's important for you to know that there have been numerous stake holder meetings over the last months – this term and last term – to gather input from the various organizations that would be affected by an RPS. The bill's sponsors – along with DES, the PUC and the OEP --- listened to this input, engaged in productive dialogues with the participants, and drafted the bill you have before you.

Exhibit 1 (Written testimony of Rep. Suzanne Harvey before the House Science, Technology, and Energy Committee on March 8, 2007).

into future years. This amended version of Senate Bill 314 was voted inexpedient to legislate by the House. House Journal No. 15 at 2006 (April 26, 2006).

Work on the RPS bill continued over the summer and fall of 2006, with the sponsors of the legislation working with the Commission, the Department of Environmental Services, the Office of Energy and Planning, and ratepayer and industry representatives to reformulate the language of the bill.[2] Robert Scott and Joanne Morin of the Department of Environmental Services took a leadership role in compiling stakeholder input and drafting of the RPS legislation over the course of the 2006 and 2007 legislative sessions.[3]

In the 2007 legislative session, as the drafters "shaped and reshaped and reshaped"[4] House Bill 873, the drafters revised the table containing the RPS purchase obligations contained in Senate Bill 314. In doing so, the drafters specifically removed the "Thereafter" column that would have created a perpetual purchase obligation and

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[2] Exhibit 4, Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007 at 2 (Senator Fuller Clark: ". . . there were fourteen months put into crafting this legislation and many, many meetings with a variety of stakeholders to bring forth a very complex bill that we have before you today.") and at 3 (Representative Harvey: "As the Senator said, we had hours and hours of stakeholder meetings over many, many months. And among the people who participated in that, including the sponsors and other representatives, we had representatives, we had representatives from the utilities, trade association, renewable developers, energy suppliers and environmental groups, plus significant help from DES, the PUC, the Office of Energy Planning, and the Office of Consumer Advocate. So we had a real big cross-section of stakeholders from all different angles coming to say what they would like in the bill, every one was listened to, all input was considered, and we looked at what was the best for the interest of the Granite State.").

[3] Compare Exhibit 5, Senate Energy, Environment and Economic Development Committee Hearing Report, February 14, 2006 at 7 (Senator Fuller Clark: "Who wrote this language? Um, well, it was put together by Joanne Morin and Bob Scott in DES. But we also had, along the way, we've probably had three or four or five different work sessions and we have had different stakeholders suggest language. A lot of it was taken from Rhode Island, some taken from New Jersey, and some taken from Connecticut, folded in to create the bill that you have before you today.") with Exhibit 5, Senate Energy, Environment and Economic Development Committee Hearing Report, April 17 at 1(Senator Fuller Clark: And so I just wanted – and the first part of the hearing testimony will be an explanation for the Committee members from both Joanne Morin, from the Department of DES, who has provided extraordinary leadership as we have shaped and reshaped and reshaped this legislation . . .").

[4] Exhibit 4, Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007 at 1.

replaced it with a column specifying percentage obligations for the years 2015 through 2025, only. Exhibit 6 (House Bill 873 as introduced). This column was amended by the House before being adopted by the Senate. Exhibit 7 (House Bill 873 as amended by the House); *see also* House Journal No. 13 at 1245-1252 (April 5, 2007); *see also* RSA 362-F:3. In debating, amending, and enacting House Bill 873, the legislature never reinserted the "Thereafter" column that was removed from Senate Bill 314, and did not create the continuous purchase obligation that the Approval Order has erroneously read into RSA 362-F:3.

The removal of language creating an RPS program of indefinite duration was purposeful, as demonstrated above, and differentiates the New Hampshire RPS from the RPS programs of other states. As stated by Rep. Harvey:

> Oh, I think that each [state] is different. Every state customizes, number one, what they ... what they will accept as a renewable energy for credit, and also customizes the percentages, ***when they start and where they end, and at what year.***

Emphasis supplied. Exhibit 4 (Senate Energy, Environment and Economic Development Committee Hearing Report, April 17 at 5). According to Rep. Harvey, "our proposed RPS program starts at a baseline percentage of renewables required, starting in 2008 and **goes out to 2025 . . .**" Emphasis supplied. *Id.* at 4.

The purposeful intent of this differentiation is confirmed by comparing RSA 362-F to the other state RPS statutes upon which the New Hampshire statute is based. The drafting of Senate Bill 314 was based upon the RPS statutes of Rhode Island, New Jersey, and Connecticut, which were "folded in to create" Senate Bill 314. Exhibit 5 (Senate Energy, Environment and Economic Development Committee Hearing Report, February 14, 2006 at 7). House Bill 873 was "crafted after looking at the successes and

strengths of the other RPS legislation . . . in New England . . . New Jersey and New York . . ." Exhibit 5 (Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007 at 2).

If the drafters of House Bill 873 had intended to create an RPS program of indefinite duration, then the other statutes that these drafters reviewed provided clear examples of how to do so. For example, the drafters of the Rhode Island program used "each year thereafter" language to create a program that continues indefinitely. *See* R. I. Gen. Laws § 39-26-4(a)(v) (2006) ("In 2020 ***and each year thereafter the minimum renewable energy standard established in 2019 shall be maintained*** unless the Commission shall determine that such maintenance is no longer necessary for either amortization of investments in new renewable energy resources for maintaining targets and objectives for renewable energy.") and R. I. Gen. Laws § 39-26-4(5) (2007) (same). Emphasis supplied. The Connecticut legislature used "on or after" language to create a perpetual program. *See* Conn. Gen. Stat. Ann. § 16-245a (1) (2004) ("***On and after*** January 1, 2010, not less than seven per cent of the total output or services of any such supplier or distribution company shall be generated from Class I renewable energy sources . . .") and Conn. Gen. Stat. Ann. § 16-245a (15) (2007) ("***On and after*** January 1, 2020, not less than twenty per cent of the total output or services of any such supplier or distribution company shall be generated from Class I renewable energy sources . . ."). Emphasis supplied. Like the Rhode Island program, the Massachusetts RPS program is also one of indefinite duration, with a proviso that its division of energy resources is empowered by the statutory language to bring an end to the program. The relevant statutory language in Massachusetts states: "Every retail supplier shall provide a

minimum percentage of kilowatt-hours sales to end-use customers in the commonwealth from new renewable energy generating sources according to the following schedule: . . . (ii) an additional one-half of 1 percent of sales each year thereafter until December 31, 2009; ***and (iii) an additional 1 percent of sales every year thereafter until a date determined by the division of energy resources.***" Mass. Gen. L. ch. 25A, § 11F(a) (2007). Emphasis supplied. The New Hampshire statute is clearly and purposefully different from these other programs, both in terms of ending the RPS Compliance obligations in 2025 and in limiting the Commission's authority to an investigatory and advisory function, as opposed to having authority to determine whether and when the REC purchase obligation is to end.

Indeed, it was the Commission's apparent understanding, prior to issuance of the Approval Order that the legislature intended to end the RPS in 2025. Soon after House Bill 873 became law, the Commission opened a rulemaking docket and adopted the Puc 2500 rules to implement the RPS program. The Commission's own rules implement an RPS program that ends in 2025. In its rules, the Commission defines "Portfolio standard" to mean "the minimum renewable energy certificate obligations pursuant to Puc 2503.01." N.H. Code Admin. R. Puc 2502.26. In Puc 2503.01, the Commission states REC purchase requirements only for the years 2008 through 2025. The Commission states criteria pursuant to which the purchase requirements may be modified, but none of the modifications described in the rule would indefinitely extend RPS compliance obligations beyond 2025. N.H. Code Admin. R. Puc 2503.01. Similarly, the Commission published a description of the RPS program and REC purchase requirements on the Commission's website. The Commission's website

describes an RPS program that ends in 2025, one that requires the purchase of RECs by class and by year - but only for the years 2008 through 2025. Exhibit 8.[5] Additionally, the Commission has launched its 2011 investigation of the RPS program, holding its first workshop on March 15, 2011. The Commission Staff asked interested parties to comment on whether the Class I and Class II requirements should be ***extended*** beyond 2025, and published the minutes of the meeting and written comments on the Commission's website. *See e.g.,* Exhibit 9, Minutes of March 15, 2011 RPS Review Workshop.[6]

The Approval Order has effectively added a "Thereafter" column to the table in RSA 362-F:3, and has created the very purchase obligation of indefinite duration that was rejected by the legislature when it refused to enact Senate Bill 314 into law. *See* Approval Order at 108 (Below, *dissenting*). This rewrite of the RPS statute is contrary to its legislative history. As demonstrated above, removal of the "Thereafter" language from RPS legislation was purposeful, with the intent of ending the RPS compliance obligation unless the legislature takes action to continue the RPS program beyond 2025, rather than leaving this policy decision to the Commission to make. The Approval Order errs by, in effect, adding words to the statute that the drafters specifically removed. *See Petition of George*, 1609 N.H. 699, 702 (2010) (intent is not interpreted by adding language that the legislature did not see fit to include). The Commission must, instead, apply the plain meaning of RSA 362-F:3, not authorize REC purchases beyond 2025, and limit its approval of cost recovery from ratepayers to that date, as any other costs are not

[5] http://www.puc.nh.gov/Sustainable%20Energy/Renewable_Portfolio_Standard_Program.htm

[6] http://www.puc.nh.gov/Sustainable%20Energy/RPS/Work%20Session%201%20-%20Minutes%20031511.pdf

costs of compliance with the RPS . RECs purchased beyond 2025 are at the risk of the contracting parties, and these purchases cannot be approved for ratepayer recovery by the Commission. See Argument II, A. below.

C. The Approval Order Erred in Implying a REC Purchase Obligation After 2025, Where the Legislature Expressly Ended the Obligation in 2025 and an End of the REC Purchase Obligation in 2025 Harmonizes with the Remainder of the Statute and Does Not Result in an Absurd or Unjust Result.

The stated purpose of the RPS statute is to "stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities." Approval Order at 74; *see also* RSA 362-F:1. The Approval Order speculates that this goal would be undermined if the REC purchase obligation were to end in 2025, because "[a]s 2025 approaches, the term of a multi-year purchase agreement could become so short that renewable energy projects could not realistically be financed and built." Approval Order at 75.[7] The Approval Order overlooks, however, that the RPS statute is designed to *reach* the percentages stated in RSA 362-F:3 *by* the years stated in that section, not for developers of yet more new generation to enter into twenty-year (as opposed to shorter multi-year) contracts during the latter years of the program. The Commission itself recognized that "the legislative debate [regarding House Bill 873] was conducted in the context of achieving a goal of 25% renewables ***by* 2025** and focused on the trajectory for achieving the Governor's '25 [***by***] **25**' goal." Emphasis supplied. *Id.*

Moreover, the Approval Order reads the multi-year contract provision of the statute, RSA 362-F:9, out of context, and not in harmony with the rest of the statute, and

[7] The Approval Order improperly conflates the RSA 362 F:1 purpose section of the statute with the RSA 362-F:5 directive to take into account "the importance of stable long-term policies" when making recommendations to the legislature under that latter section.

not in harmony with RSA 374-F:3, V(c). The multi-year contract provision in RSA 362-F:9 creates a voluntary process for distribution utilities to obtain pre-approval of prudent RPS compliance costs in their distribution rates under RSA 374-F:3, V(c). *In re: Public Service Company of New Hampshire*, Docket DE 08-077, Order No. 24, 965, 94 NH PUC 209, 218-19 (May 1, 2009). In Order 24,965, the Commission stated:

> We agree with Staff that the reason the statute requires our approval of these multi-year agreements is to allow the petitioning utility to recover the prudently incurred costs of such agreements in its energy service rates. If PSNH had intended to use the agreements "below the line," the Company would not have had to seek the Commission's approval. Therefore, we disagree that PSNH was required to seek approval from the Commission before it could enter into the subject agreements. If for some reason we were to find that the contracts were not in the public interest, PSNH would still be bound by the contracts, but would not be allowed to recover the associated costs from its customers.

Id.

This voluntary review and approval of multi-year contracts applies only to a subset of the parties that are subject to the RPS compliance obligation laid out in RSA 362-F:3, that is, to electric distribution utilities. PSNH and all other parties subject to the RPS purchase obligation remain free to enter into REC contracts of any duration, even those that go beyond 2025, without Commission approval. *See id.* Application of the plain meaning of RSA 362-F:3 and 362-F:9, I, then, would prohibit the Commission only from pre-approving for rate recovery multi-year distribution utility contracts that exceed the extent of the compliance requirements set forth in RSA 362-F:3, meaning that distribution utilities would have to demonstrate the prudence of such speculative purchases after the fact, such as in PSNH's energy service rate proceedings. A distribution utility, like any other retail provider of electricity subject to the statutory REC purchase obligation, must bear the risk of recovering the costs of REC purchases that exceed the statutory RPS compliance requirements. This is not an absurd, unjust, or

irrational result. While the guarantee extended to distribution utilities under RSA 362-F:9, I and RSA 374-F:3, V(c) is limited to the extent of RPS compliance requirements, the distribution utilities are guaranteed to recover their prudent RPS compliance costs.

Further, applying RSA 362-F:3 as written does not, as reasoned by the Approval Order, require the Commission to place a "temporal restriction on multi-year agreements not stated [in RSA 362-F:9, I]." Approval Order at 74-75. Rather, the restriction is explicitly stated in RSA 362-F:9, I: the Commission may only authorize entry into "multi-year purchase agreements . . . for certificates . . . to meet reasonably projected renewable portfolio requirements and default service needs ***to the extent of such requirements.***" RSA 362-F:9, I. Reference to the extent of RPS purchase requirements, as explicitly set forth in RSA 362-F:3 by specific year and percentage, does not constitute reading a temporal restriction into the statute; rather it is giving effect to the plain meaning of the statute as written. Indeed, it is the Approval Order that does injustice to the RSA 362-F wording chosen by the legislature. In addition to effectively adding "Thereafter" language in RSA 362-F:3, the Approval Order implicitly seeks to alter the language of RSA 362-F:9, I, by removing the "extent of such requirements" language and changing "multi-year agreement" into "long-term" or "20-year agreement."

The Approval Order further errs in creating a perpetual RPS requirement based on speculation that applying RSA 362-F:3 as written would make Commission review and reporting in 2025 a meaningless exercise, because such speculation ignores the legislature's selected approach to monitoring and modifying the RPS program. The legislature provided for three different reviews of the RPS program so that the legislature could make adjustments to the percentages if necessary and desirable. *See* RSA 362-F:5.

Read in its entirety, the wording and structure of RSA 362-F:5 evince the intent that the legislature wants to decide for itself whether to extend the RPS compliance obligation beyond 2025, perhaps in 2012, 2019, or 2026, after receiving recommendations from the Commission as to "what if any mid-course corrections are appropriate." *See* Order 25,213 at 112 (Below, *dissenting*).

The legislative history supports this plain reading of the statute.[8] The legislature's selected approach allows the Commission to make recommendations regarding the purchase obligations beginning this year - a full 14 years before the end of the program. If the legislature were not to authorize an extension beyond 2025 following the commission's 2011 review and report, the legislature could authorize such an extension following the commission's 2018 report. Even a review and report by the Commission in November report would allow for action on a bill in early 2026 to require REC purchases in that year, if an extension had not been earlier authorized by the legislature. Hence, the Commission cannot presage the content or usefulness of a review and report to be conducted in 2025 and declare it a meaningless exercise today. Such a conclusion is simply not supported or supportable by the record, or by any reasonable reading of the RPS statute.

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[8] Exhibit 4, Senate Energy, Environment and Economic Development Committee Hearing Report, April 17, 2007 at 7 (Scott: To assure again, that we get the percentages right, how we do this right, as mentioned, there are three required review periods where the Public Utilities Commission is required to open a docket and look at the program and make sure it's doing what we expect it to do; make sure the percentages are correct, make sure the prices make sense for New Hampshire; the costs, if there are any, or the benefits. And that's required at three different times: 2011, 2018 and 2025; and they're required to make recommendations to the General Court. And it's our hope to be – again, we know this is probably not perfect, we want to move ahead; we spent a lot of time on this, and this is our hope to, ok, if we do need to make a correction there's a mechanism in place.") and *id.* at 9 (Morin: The changes that were made were that the percentage for new renewables was increased over time; the percentage had stopped at 2015, it was moved up a little bit sooner, I think by one year, and increasing ***out to 2025***, balanced by PUC reviews to see how the cost of RECs are going and see if this [is] working in the way we thought it would, economically, so that we feel we have sort of a mechanism if it doesn't work as predicted. . . . we did add two more PUC reviews as well; people really thought that was a good mechanism to keep tabs on the bill and be able to adjust it over time."

II. THE APPROVAL ORDER IS UNLAWFUL IN ASSERTING THE JURISDICTIONAL AUTHORITY UNDER RSA 362-F TO APPROVE A CONTRACT WHOSE TERM FOR THE PURCHASE OF RECS AND THE RECOVERY OF THE COSTS OF THOSE RECS FROM RATEPAYERS EXTENDS BEYOND 2025.

"The [Commission] is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Service Company of New Hampshire*, 122 N.H. 1062, 1066 (1982). The Commission's power to authorize PSNH to enter into a multi-year purchase agreement for RECs in conjunction with a power purchase agreement "is limited to the authority specifically delegated or fairly implied by the legislature and may not be derived from other generalized powers of supervision." *Cf. Id.* (applied to sale of stock and bonds). Contrary to the limited authority and jurisdiction granted the Commission under 362-F to approve contracts and cost recovery through 2025, the Approval Order indicates the Commission will approve a PPA requiring REC purchases by PSNH beyond 2025 and approve cost recovery of such purchases from ratepayers.

A. The Commission Lacks Jurisdiction and Authority to Authorize and Approve Cost Recovery for REC Purchases Beyond 2025 and the Levelization of the REC Purchase Obligation.

The scope of the Commission's authority to authorize PSNH to enter into a REC purchase contract under RSA 362-F is derived from RSA 362-F:9, I. This is the only statute that permits the Commission to authorize PSNH "to enter into multi-year purchase agreements" for RECs "in conjunction with . . . purchased power agreements," and it only permits the Commission to authorize contracts necessary "to meet reasonably projected renewable portfolio requirements and default service needs *to the extent of such requirements* . . . " RSA 362-F:9, I. Emphasis supplied. RSA 374-F:3, V(c) is the only

statute that permits the Commission to approve the recovery by distribution companies of the cost of such contracts from their ratepayers, and this statute only permits the recovery in rates of "prudently incurred costs arising from *compliance with the renewable portfolio standards* of RSA 362-F . . ." RSA 374-F:3, V(c). Renewable portfolio compliance standards are set forth in RSA 362-F:3, and these RPS compliance standards end in 2025. RSA 362-F:3 and Argument I above. There is no legislative grant of authority or jurisdiction to the Commission to authorize and approve cost recovery for multi-year contracts for REC purchases beyond the extent of the requirements set forth in RSA 362-F:3. Because PSNH's compliance obligation to purchase RECs ends in 2025 under RSA 362-F:3, the Commission lacks authority to approve and provide cost recovery for REC purchases that would occur after that date; hence, the Approval Order is unlawful in asserting the Commission's authority and jurisdiction to approve such a contract.

Likewise, the Commission lacks authority and jurisdiction under RSA 362-F to levelize a projection of PSNH's REC purchase requirements. The Approval Order is unlawful in this regard because it uses the Commission's projection of PSNH's RPS requirements for the 20-year term of the PPA (that is. both pre- and post-2025 REC purchase obligations) levelizes this projection over the twenty-year PPA term, allows PSNH to purchase the levelized annual amount rather than the amount of RECs required to meet the statutory compliance requirement applicable to each year of the contract term, and then binds ratepayers to fund the purchase of RECs not required for compliance with PSNH RPS requirements.

There is no grant of authority to the Commission in RSA 369-F:9 to levelize any REC requirements or projections from year-to-year over a contract term. *Cf.* RSA 362-

A:4 and 18 C.F.R. §292:304(d) (authorizing avoided cost rates to be calculated for a term, thereby authorizing levelized avoided cost rates under the Public Utility Regulatory Policies Act of 1978). Levelizing under the Approval Order only allows PSNH to purchase more RECs in 2014 than are required by RSA 362-F:3, at a detriment to PSNH ratepayers and in violation of RSA 362-F:9, I. Indeed, the plain wording of RSA 362-F:9, I, which permits the approval of multi-year REC purchase contracts only to the extent of RPS compliance requirements, demonstrates a legislative intent to prohibit such levelization. Furthermore, because the excess RECs that PSNH will purchase in the early years of the PPA term are not required for compliance with the RPS requirements set forth in RSA 362-F:3 during those years, the Commission lacks authority and jurisdiction under RSA 374-F:3, V(c) to pre-approve for ratepayer recovery the cost of these excess RECs.

For the reasons stated above, the Approval Order erred in finding that PSNH could reasonably project that the Class I RPS requirement for 2025 will continue in effect thereafter and by authorizing PSNH to purchase RECs on a levelized basis and therefore in excess of its actual RPS compliance requirement.

B. The Commission Lacks Authority and Jurisdiction to Approve Change in Law Provisions in a Contract Under RSA 362-F which Fail to Give Effect to the Commission's Authority under RSA 365:28.

In the Approval Order, the Commission effectively asserts its right to waive, ignore or otherwise not apply the plain meaning of RSA 365:28 to contracts under RSA 362-F and RSA 374-F: V(3). Consequently, for the twenty-year term of the conditioned PPA Articles 1.44, 1.57, 8.1, and 23.1 of the proposed contract will unlawfully insulate Laidlaw and PSNH from legislative changes in the RPS program and prevent the

Commission and future Commissions from revisiting critical terms of its approval, including the number of NH Class I RECs to be purchased, the purchase price for those RECs, and the reasonableness of the amount of the REC price to be recovered from ratepayers in the future, either on the Commission's own motion or in response to any new legislative directives. However, RSA 362-F, 374-F:3, V(c), and 365:28, read in *pari materia,* prohibit the Commission from creating non-modifiable REC purchase requirements and insulating the contracting parties from future legislative action, at ratepayers' expense.

RSA 365:28 grants the Commission broad authority to revisit and "alter, amend, suspend, annul, set aside, or otherwise modify" any of its orders. Nothing in the RPS statute or RSA 374-F:3, V(c) explicitly modifies or repeals the Commission's jurisdiction under RSA 365:28 over the orders it issues pursuant to RSA 362-F:9 and RSA 374-F:3, V(c). This was intentional. Whenever the legislature has intended to curtail the Commission's jurisdiction under RSA 365:28, the legislature has done so explicitly.[9] The lack of an explicit repeal or modification of the Commission's jurisdiction under RSA 365:28 demonstrates that the legislature intended to require the Commission to retain its jurisdiction over orders issued pursuant to RSA 362-F:9 and RSA 374-F:3, V(c).

In fact, read in *pari materia,* RSA 362-F, RSA 374-F:3, V(c), and RSA 365:28 bar the Commission from approving any RSA 362-F contract containing terms that would abrogate the Commission's jurisdiction under RSA 365:28. RSA 362-F and RSA 365:28 both govern the Commission's jurisdiction over orders concerning REC purchase

[9] *See, e.g.,* RSA 369-B:3, II and III (revoking the Commission's general authority under RSA 365:28 to rescind, alter, or amend its orders or requirements thereof with regard to rate reduction bond financing); RSA 362-C:6 (prohibiting the Commission from altering, amending, suspending, annulling, setting aside or otherwise modifying its approval of the restructuring of PSNH); and RSA 362-C:7 (same with regard to Commission approvals of certain rate plans for the New Hampshire Electric Cooperative).

agreements while RSA 374-F:3, V(c) governs cost recovery. These three provisions therefore must be read in *pari materia*. *See Petition of Public Service Company of New Hampshire*, 130 N.H. 265, 273-74 (1988) (reading "anti-CWIP" and "emergency rate" statutes in *pari materia* to prevent the Commission from authorizing emergency rates to ameliorate a financial crisis that PSNH claimed arose from the anti-CWIP law). Statutes that deal with similar subject matter should be construed so that they do not contradict each other where reasonably possible, so that they lead to reasonable results and effectuate the legislative purpose of the statutes. *Id.* at 273.

RSA 362-F, RSA 374-F:3, V(c), and RSA 365:28 do not contradict each other, are not ambiguous, and are readily harmonized. RSA 362-F:9 empowers the Commission to issue orders authorizing electric distribution companies to enter into multi-year REC purchase agreements. RSA 374-F:3, V(c) allows for recovery of the prudently incurred costs of compliance with the RPS statute. RSA 365:28 grants the Commission continuing jurisdiction over orders issued pursuant to these provisions and the ability to revisit and "alter, amend, suspend, annul, set aside, or otherwise modify" those orders. Further, between the commencement of the RPS program and its termination in 2025, the legislature reserved to itself at least three opportunities to change or eliminate RPS requirements after receiving reports and recommendations from the Commission. RSA 362-F:5. These reviews are to occur in 2011, in 2018, and again in 2025, immediately before the RPS program is set to end, *id.*, with legislative action or inaction to occur in the 2012, 2019 and 2026 legislative sessions. *See Id.* RSA 365:28, which was not repealed or limited by the enactment of the RPS statute, works in harmony with RSA 362-F:5 and 374-F:3, V(c) by permitting the Commission to revisit its orders

issued pursuant to RSA 362-F:9 and RSA 374-F:3, V(c) to respond to any changes in law following such reviews (or otherwise) or to any other circumstances affecting the public interest.

Unlike the RPS programs in other states, New Hampshire did not provide for vesting of statutorily-created REC purchase obligations underlying multi-year REC purchases and recovery of related costs. For example, Massachusetts law provides that "If RPS requirements terminate . . . contracts already executed and approved by the Department will remain in full force and effect." 220 CMR 17:08(3). The New Hampshire legislature could have provided for similar vesting by making an explicit statement similar to the one quoted above, or it could have authorized the Commission to provide for such vesting, but the New Hampshire legislature did not.

The New Hampshire legislature also could have authorized such vesting by qualifying the Commission's jurisdiction under RSA 365:28. Again, the legislature did not. Instead, the New Hampshire legislature left intact the Commission's jurisdiction under RSA 365:28.

The Approval Order seeks to avoid the import of the application of RSA 365:28 by stating that, if the Commission "were to claim unlimited authority to revise contractual obligations such as those contained in the [PPA] after [approving] them, the resulting uncertainty would halt the use of [contracts] for the procurement of power and RECs. Such uncertainty would be harmful to both utilities and their customers, and would ultimately be detrimental to the development of renewable energy facilities in New Hampshire." Order 25,192 at 8; *see also* Approval Order at 17. Notwithstanding that view, RSA 362-F did not repeal RSA 365:28 or RSA 374-F:3, V(c) and enacted no

provision allowing the Commission to waive such authority. Compare footnote 9 and statutes cited therein. As a consequence, these statutes must be read in *pari materia*, and an order approving a contract under RSA 362-F must be reviewable under RSA 365:28 to give full effect to all relevant statutes. Therefore, the Commission lacks jurisdiction and authority to approve RSA 362-F contracts which do not give effect to the Commission's continuing authority and jurisdiction under RSA 365:28.

C. The Commission Lacks Authority to Authorize and Approve Cost Recovery for RECs that are not Required for Compliance with the New Hampshire RPS.

The change in law provisions in the PPA submitted by PSNH require the present approval of the purchase of, and cost recovery for, RECs produced by the Laidlaw power plant notwithstanding any future legislative or regulatory changes that would revise, replace, or displace the New Hampshire RPS program and New Hampshire RECs. *See, e.g.,* PSNH Exhibit 2 at Art. 1.8 (including changes by preemption, displacement or substitution), Art. 1.57 (providing for payment if RSA 362-F is preempted by federal law). These changes in law provisions, which were approved in the Approval Order as acceptable in a compliance contract filing, also require the present approval for the purchase of, and cost recovery for, renewable attributes that do not qualify for compliance with the New Hampshire RPS, at prices that may not be permissible under the New Hampshire RPS, if the statute is amended, repealed, or displaced. *See e.g., id.* at Art 1.44 (NH Class I RECs include RECs that would have been produced regardless of subsequent changes in law and hence may not be Class I RECs) and Art. 1.57 (payment may never drop below the alternative compliance payment amount in effect on the date of the PPA, regardless of subsequent changes in law, including changes that would render

the Laidlaw RECs ineligible for New Hampshire Class I). There is nothing in RSA 362-F:9, I or RSA 374-F:3, V(c) that allows the Commission to authorize the purchase of and approve for cost recovery anything but the costs of compliance with New Hampshire's RPS statute. If the purchase is for something other than compliance with the New Hampshire RPS statute, then the Commission may not pre-approve cost recovery for these items by authorizing entry into the purchase obligation.

For the foregoing reasons, the Wood-Fired IPPs respectfully request rehearing of the Approval Order and ask the Commission to issue an order consistent with the foregoing and applicable to any compliance contract filing to be made in this docket.

Respectfully submitted,

BRIDGEWATER POWER COMPANY, L.P.,
PINETREE POWER, INC.,
PINETREE POWER-TAMWORTH, INC.,
SPRINGFIELD POWER LLC,
DG WHITEFIELD, LLC d/b/a WHITEFIELD POWER & LIGHT COMPANY, and
INDECK ENERGY–ALEXANDRIA, LLC

By Their Attorneys,

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EXHIBIT 1

HB 873 -- establishing minimum renewable standards for energy portfolios
Rep. Suzanne Harvey, Hills 21

Twenty-three states have adopted a renewable portfolio standard, or RPS. New Hampshire is the only New England state that has yet to put an RPS in statute. Adopting a NH RPS will allow us to be a player in the regional and national markets.

NH needs to enact its own RPS to be able to promote those energy resources that are of significance to NH and to provide additional market demand for renewables that provide jobs and tax revenue to our state.

NH renewable resources have indeed benefited from the existence of other states' RPS statutes but are also at risk if there aren't other markets in which they can participate. We can provide reliability for investors and companies right here without forcing them to depend on the status of other states' RPS rules.

What is an RPS? Simply stated, it requires the state's electricity providers to offer a specific percentage of their energy from renewable energy sources. Each state with an RPS customizes its definition of renewable energy, for example, some states' RPS might define "renewables" only as wind and solar.

In this bill, you'll see that in the interest of promoting a diversity of energy sources in NH, we've included a broad selection: wind; geothermal; fuel cells; ocean thermal, wave, current or tidal energy; methane gas; biomass; solar; and hydroelectric. These sources are grouped into four classes—two classes addressing new sources of renewable energy and two classes addressing already existing sources.

The mechanics of an RPS include a gradual but specific percent increase in the annual retail distribution of renewable energy for electricity until a final percentage goal for each class is achieved in 2025. You can see the chart for these increases in the bill.

An RPS is a market-based program in which utilities obtain annually a renewable energy certificate, or REC, for each unit (one megawatt hour) of electricity they generate from renewable sources. If RECs are available below a certain price, the utility can make an alternative compliance payment into a Renewable Energy Fund, which will be used to support renewable energy initiatives and administer the program. This mechanism essentially caps the cost of the program and is commonly used in other states.

You will be hearing a detailed explanation of the bill from representatives of DES and the PUC, and I'd appreciate it if you could hold your technical questions for them.

But I'd like to tell you why I think it's so important for this legislature to pass an RPS.

As I see it, the main purpose of an RPS is twofold:

--to decrease our dependence on fossil fuels (one of the main sources of greenhouse gases) and their volatile prices by generating a portfolio of clean alternative energies, and

--to promote the development of renewable energy sources in NH, thus driving economic development right here in the Granite State.

To emphasize an important point: These clean energy sources do not have the negative impact on our environment and our health that the burning of fossil fuels does.

Also, although some renewable sources such as wind and solar may vary in output and some such as geothermal and others are workhorses 24/7, together they provide a diversity of energy supply that can enhance system reliability.

RPS is not new to the legislature. Last year I filed a bill in the House to establish a study committee that would look at an RPS for NH. Sen. Fuller Clark and others co-sponsored that bill. The senator sponsored a Senate bill to establish an RPS in the state. I joined others in co-sponsoring that bill.

My study committee bill was the vehicle used in a committee of conference to establish the state Energy Policy Commission chaired by our colleague, Rep. Garrity. The Senate passed Sen. Fuller Clark's bill with an amendment so it could be forwarded to the ST&E committee in the House, where it would receive more attention. It did not pass in the House.

Last year's bill has been thoroughly worked over and is a more complete bill.
In addition, this year we have an economic impact study from UNH that you've received.

It's important for you to know that there have been numerous stakeholder meetings over the last months--this term and last term--to gather input from the various organizations that would be affected by an RPS. The bill's sponsors--along with DES, the PUC and the OEP--listened to this input, engaged in productive dialogues with the participants, and drafted the bill you have before you.

Throughout this vetting process I don't think there were any voices against NH adopting an RPS but rather different approaches to take. We have attempted to incorporate as many suggestions as possible and keep as many stakeholders as satisfied as possible.

This is one of the most, if not *the* most important bill our committee will deal with this year. You'll be hearing from many stakeholders and experts today. I hope you'll all participate in the committee work sessions scheduled and I hope you'll agree with me that the time is right for a New Hampshire RPS as public policy.

Thank you.

EXHIBIT 2

06-2904
03/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT establishing minimum renewable standards for energy portfolios.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Application of Receipts; General Revenue Exceptions; Compliance Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the compliance fund established under RSA 374-G:6.

2 New Chapter; Electric Provider Renewable Energy Requirement. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC PROVIDER RENEWABLE ENERGY REQUIREMENT

374-G:1 Definitions. In this chapter:

I. "Certificate" means the document or documents, either electronic or physical, produced by the New England Power Pool Generation Information System ("GIS") or any successor mechanism that represents each megawatt-hour generated by a renewable energy resource, or such alternative documentation evidencing the same if the GIS is no longer maintained and no successor mechanism has been established.

II. "Commission" means the public utilities commission.

III. "Provider of electricity" means a provider of electricity to any retail customers located in this state, including without limitation, any provider of default service, or similar service, under state law, including under RSA 374-F, but shall not include any person which provides its own electricity from on-site generation.

IV. "Renewable energy resource" means the production of electricity from any of the following: (a) solar photovoltaic or solar thermal electric energy; (b) wind energy; (c) ocean thermal, wave, or tidal energy; (d) geothermal energy; (e) fuel cells utilizing renewable fuels; (f) hydroelectric energy; (g) biologically-derived methane gas from anaerobic digestion of organic materials from such things as yard waste, food waste, animal waste, sewage sludge and septage, and landfill waste; and (h) low-emission biomass technologies using non-construction and demolition debris derived from such fuels as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, and slash, including agricultural or food wastes, energy crops, biogas, or biodiesel, provided that the generation unit has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu) and a quarterly particulate emission rate of less than or equal to 0.02 lbs/Mmbtu.

374-G:2 Minimum Renewable Standards for Energy Portfolios.

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section.

II. The commission shall establish a baseline that represents the minimum percentage of load of renewable energy resources that each electricity supplier must provide in year one of the program. The baseline requirement for each provider shall increase by an additional 0.5 percent in each year.

III. If an electricity provider represents to a retail customer that the electricity provider is selling to the retail customer energy that includes renewable energy resources, such representation shall include a disclaimer indicating the minimum renewable standard for the electricity provider established in paragraph II.

374-G:3 Renewable Energy Certificates.

I. The renewable energy program established in this chapter shall utilize the regional system energy certificate tracking system (GIS) administered by the Independent System Operator-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) or their successors. If the regional system energy certificate tracking system (GIS) administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program after public notice and hearing to be designed comparable to the ISO-New England GIS to the extent possible.

II. The commission shall designate New Hampshire eligible renewable resources to the ISO-New England.

III. Renewable energy certificates (RECs) obtained for purposes of complying with this chapter shall come from generation within the ISO-New England region unless an external unit contract for delivery of the energy to the ISO-New England control area is executed and such contract includes associated transmission rights for delivery of the generation unit's electrical energy over the ties from an adjacent control area to the ISO-New England control area.

374-G:4 Sale or Exchange of Certificates. A certificate may be sold or otherwise exchanged by the renewable energy resource to which it was initially issued or by any other person or entity that acquires the certificate; however, the certificate may only be used once and must be used in the calendar year in which the generation represented by the certificate was produced. RECs shall not be divisible; those RECs used to meet other resource or environmental portfolio standards in other jurisdictions are not eligible for consideration under this chapter.

374-G:5 Information Collection. Within 180 days of the end of each calendar year, each electricity provider shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by electricity providers.

374-G:6 Alternative Compliance.

I There is hereby established a compliance fund. This nonlapsing revolving special fund shall be continually appropriated to be expended by the commission in accordance with this section. The state treasurer shall invest the monies deposited therein as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The monies paid into the fund under paragraph II of this section shall be used by and administered by the commission for the following purposes: supporting renewable energy projects, energy efficiency, and demand-side management.

II. An electricity provider shall discharge any annual shortfall in its portfolio requirements by making a payment into the fund at the rate of $50 per megawatt-hour of shortfall for calendar year 2007. The rate per megawatt-hour shall be published by the commission by January 31 of each year thereafter, and shall be equal to the previous year's rate adjusted according to the change in the previous year's northeast region consumer price index for all urban consumers as published by the Bureau of Labor Statistics, United States Department of Labor.

374-G:7 Rulemaking. The commission shall adopt rules as necessary, pursuant to RSA 541-A, to implement this program.

3 Effective Date. This act shall take effect January 1, 2007.

EXHIBIT 3

06-2904
03/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT establishing minimum renewable standards for energy portfolios.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Statement of Purpose. The general court finds that:

I. Increased use of renewable energy technologies and continued use of existing renewable energy technologies that decrease nitrogen oxide and particulate matter emission rates can reduce air pollution in the state and air pollution transported across state lines, and thereby improve air quality and help advance long-term climate change strategies.

II. Renewable energy technologies provide fuel diversity to the state and New England generation supply and have the potential to lower and stabilize future energy costs by reducing the region's dependence on imported fossil fuels such as natural gas and oil.

III. It is in the public interest to stimulate investment in new, lower emission, renewable energy technologies and investments in improving air emission quality from existing renewable energy technologies.

IV. It is in the public interest to support incentives to reduce New Hampshire's consumption of fossil fuels consistent with regional, national, and international policy on promoting renewable energy and which also have the potential of reducing the long-term cost of energy.

2 New Subparagraph; Application of Receipts; Compliance Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (242) the following new subparagraph:

(243) Moneys deposited in the compliance fund established under RSA 374-G:6.

3 New Chapter; Electric Provider Renewable Energy Requirement. Amend RSA by inserting after chapter 374-F the following new chapter:

CHAPTER 374-G

ELECTRIC PROVIDER RENEWABLE ENERGY REQUIREMENT

374-G:1 Definitions. In this chapter:

I. "Certificate" means the electronic record produced by the New England Power Pool Generation Information System (GIS) its designee or successor, identifying each mega-watt hour generated by a renewable energy resource or any successor mechanism that represents each megawatt-hour generated by a renewable energy resource, or such alternative documentation evidencing the same if the GIS is no longer maintained and no successor mechanism has been established.

II. "Commission" means the public utilities commission.

III. "Compliance year" means a calendar year beginning January 1 and ending December 31, for which a provider of electricity must demonstrate that it has met the requirements of this chapter.

IV. "Eligible biomass technologies" means biomass technologies using as their primary fuel source non-construction and demolition debris derived material such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, sawdust, and slash; and energy crops, biogas, or biodiesel; provided that the generation unit has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and a quarterly average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu. The term "primary fuel source" means at least 90 percent of the total energy input into the generating unit, on an Mmbtu basis.

V. "End-use customer" means any person or entity in New Hampshire that purchases electrical energy at retail.

VI. "Historical generation baseline" means the average annual electrical production from the eligible renewable energy resources, stated in megawatt-hours (MWhrs), for the 3 calendar years 1995 through 1997, or for the first 36 months after the commercial operation date if that date is after December 31, 1994 (the "baseline period"); provided however, that the historical generation baseline shall be measured regardless of whether or not the average annual electrical production during the baseline period meets the eligible requirements of this paragraph.

VII. "Provider of electricity" means a provider of electricity to any end-use customer located in this state, including, without limitation, the local distribution company providing default service or similar service under state law, including RSA 374-F, but shall not include:

(a) A person who provides his or her own electricity from on-site generation which supplies electricity exclusively from renewable energy resources, qualifying small power production facilities, and qualifying cogeneration facilities as defined in RSA 362-A:1-a; or

(b) The provision of the internal electrical needs of any electrical generating station from its generation or from affiliate generation.

VIII. "Renewable energy resources" means new renewable energy resources – class I, incremental renewable energy resources – class I, or existing renewable energy resources – class II. An electrical generating facility selling its electrical output at long-term rates established before January 1, 2006 by orders of the commission under RSA 362-A:4 shall not be a renewable energy resource – class II, until the date on which it ceases to sell its electrical output at those original long-term rates.

IX. "Renewable energy resources – new-class IA" means the production of electricity from any of the following, provided the resource has a commercial operation date after January 1, 2006:

(a) Solar photovoltaic or solar thermal electric energy;

(b) Wind energy;

(c) Geothermal energy;

(d) Fuel cells utilizing renewable fuels;

(e) Ocean thermal, wave, or tidal energy;

(f) Biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, and septage, and landfill waste; and

(g) Eligible biomass technologies having a gross nameplate capacity of 50 megawatts (MW) or less, including any biomass unit whose primary fuel source was coal prior to January 1, 2006.

X. "Renewable energy resource – new-class IB" means the production of electricity from solar photovoltaic or solar thermal energy and an operation date after January 1, 2006.

XI. "Renewable energy resource – new incremental (class IC)" means the incremental output in any compliance year over the historical generation baseline, provided that such existing renewable energy resource (class II) was certified by the commission to have demonstrably completed capital investments after January 1, 2006 attributable to the efficiency improvements or additions of capacity that are sufficient to, were intended to, and can be demonstrated to increase annual electricity output. The determination of incremental production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

XII. "Renewable energy resources - existing (class IIA)" means the production of electricity from any of the following, provided the resource has a commercial operation date for electrical generation before January 1, 2006:

(a) Biologically derived methane gas from anaerobic digestion of organic materials from such things as yard waste, food waste, animal waste, sewage sludge and septage, and landfill waste;

(b) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less; and

(c) Municipal solid waste combustion technologies subject to RSA 125-M.

XIII. "Renewable energy resources – existing (class IIB)" means the production of electricity from hydroelectric energy that has a gross nameplate capacity of 5 MWs or less and are constricted in their operation by fish ladders or other similar fish facilities.

374-G:2 Minimum Renewable Standards for Energy Portfolios.

I. Providers of electricity in this state shall obtain renewable energy certificates from renewable energy resources to meet the minimum renewable standards for its energy portfolio established by this section or make payments as provided in RSA 374-G:6, II, III, and IV.

II. For the period of January 1 through December 31, 2007, during that calendar year

and in each subsequent calendar year through December 31, 2013 and as provided in RSA 374-G:4 of this chapter, a provider of electricity shall obtain renewable energy certificates from the various classes of renewable energy resources, defined in RSA 374-G:1, representing the following percentages of its total kilowatt-hours of electricity supplied to its end-use customers unless modified by the provisions in paragraph IV:

	2007	2008	2009	2010	2011	2012	2013	Thereafter
Class IA +/or C	0.5%	1%	1%	1%	2%	3%	4%	4%
Class IB	0.01%	0.02%	0.04%	0.08%	0.15%	0.20%	0.30%	0.3%
Class IIA	3%	4%	5%	6%	6%	6%	6%	6%
Class IIB	1%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%

III. On or about January 1, 2010, the commission shall open a docket to conduct a review of the requirements in paragraph II and make recommendations for any changes to the legislature to be effective after July 1, 2011. In the docket the commission may also determine the adequacy or potential adequacy of renewable energy resources to meet the percentage requirements of paragraphs II and III of this section. If the commission determines an inadequacy or potential inadequacy of supplies for the required percentages, the commission shall recommend to the general court a revised schedule of required percentages to achieve the purposes of this chapter.

IV. If a provider of electricity represents to an end-use customer that the provider of electricity is selling to the retail customer energy that includes renewable energy resources, such representation shall include a statement of the minimum renewable standard for the provider of electricity established in paragraph II. The minimum renewable energy percentages set forth in RSA 374-G:2, II shall be met for each electrical energy product offered to end-use customers, in a manner that ensures that the amount of renewable energy to end-use customers voluntarily purchasing renewable energy is not counted toward meeting such percentages.

V. Wholesale and retail electric suppliers under supply contracts executed by providers of electricity as of the effective date of this chapter shall be exempt from the requirements of paragraphs II-IV, provided however, that no exemption shall extend beyond 36 months after the effective date of this chapter. Under no condition during this transition period shall a minimum renewal standard obligation be shifted to another customer or customer class in order to compensate for a delay in implementation of the minimum renewal standard to another customer or customer class due to this exemption.

374-G:3 Renewable Energy Certificates.

I. The renewable energy program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by the Independent System Operator-New England, Inc. (ISO-New England) and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking system administered by

the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to be as comparable to the GIS certificate tracking system as possible.

II. The commission shall designate in a timely manner New Hampshire eligible renewable resources to the ISO-New England.

III. Certificates obtained for purposes of complying with this chapter shall come from renewable energy resources within the ISO-New England region unless an external unit contract for delivery of the energy to the ISO-New England control area is executed and such contract includes associated transmission rights for delivery of the generation unit's electrical energy over the ties from an adjacent control area to the ISO-New England control area.

374-G:4 Sale or Exchange of Certificates. A certificate may be sold or otherwise exchanged by the renewable energy resource to which it was initially issued or by any other person or entity that acquires the certificate; however, the certificate may only be used once for compliance with the requirements of this chapter and may not be used for compliance with this chapter if used for compliance with any requirements of another jurisdiction. Except as otherwise provided in paragraphs II and III, certificates shall be used by providers of electricity for compliance with the requirements of RSA 374-G:2 in the calendar year in which the generation represented by the certificate was produced. Compliance with each year's RSA 374-G:2 requirement shall be determined with certificates issued in the certificate trading periods associated with the calendar year of compliance.

II. A provider of electricity may use certificates associated with renewable energy resource production during one calendar year for compliance with the requirements of this chapter in either of the 2 subsequent calendar years, provided such certificates:

(a) Have not been used for compliance in another jurisdiction and are used only once;

(b) Were in excess of those needed for compliance with this chapter in the year in which they were generated;

(c) Have not otherwise been, nor will be, sold, retired, claimed, or represented as part of electrical energy output or sale, or used to satisfy obligations in jurisdictions other than New Hampshire, demonstrated by retiring banked certificates in the compliance year in which they were generated; and

(d) Used by a provider of electricity do not exceed 30 percent of the provider's obligations under this chapter for the calendar year in which such certificates are used.

III. In addition to certificates produced in calendar year 2007, a provider of electricity may use renewable energy resources class I or class II certificates associated with generation during calendar year 2006 and those associated with generation during the first calendar quarter of 2008 for compliance with its calendar year 2007 obligations under RSA 374-G:2, provided:

(a) Renewable energy resources class I certificates are used for calendar 2007 class I obligations and renewable energy resources class II certificates are used for calendar year 2007 class II obligations; and

(b) No more than 30 percent of the 2007 calendar year obligation under RSA 374-G:2 of this chapter is met with such certificates.

374-G:5 Information Collection. Within 180 days of the end of each calendar year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

374-G:6 Alternative Compliance.

I. There is hereby established a compliance fund. This nonlapsing revolving special fund shall be continually appropriated to be expended by the commission in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section shall be used and administered by the commission for the following purposes: supporting thermal and electrical renewable energy initiatives, energy efficiency, and demand-side management including programs that reduce demand for both electricity and non-renewable fuels used in heat production and transportation, with the exception of funds collected relative to compliance with class IB. The moneys paid into the fund relative to compliance with class IB production of electricity from solar photovoltaic or solar thermal energy shall be used by and administered by the commission for supporting solar energy resources.

II. An electricity provider may discharge any annual class IA or IC portfolio requirements by making a payment into the fund of $0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with the statute. The revised rate per megawatt-hour shall be published by the commission by January 31 of each year.

III. An electricity provider may discharge any annual class IB portfolio requirements by making a payment into the fund of $0 per megawatt-hour of renewable energy obligation in 2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this chapter. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

IV. An electricity provider may discharge any annual class II portfolio requirements by making a payment into the fund of $0 per megawatt-hour of renewable energy obligation in

2007 dollars, adjusted annually by the annual change in the United States Bureau of Labor Statistics Consumer Price Index, which may be made instead of standard means of compliance with this statute. The commission by January 31 of each year shall publish the revised rate per megawatt-hour.

374-G:7 Application.

I. The commission shall certify generation facilities as either renewable energy resources class I or class II by issuing a determination within 45 days of receipt of an application. The application shall contain the following:

(a) Name and address of applicant;

(b) Facility location and NEPOOL GIS identification number;

(c) Description of the facility, including fuel type, gross generation capacity, commercial operation date, and, in the case of a biomass renewable energy resource, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates; and

(d) Such other information as the applicant may provide to assist in the determination of the generating facility as a renewable energy resource.

II. Biomass facilities otherwise meeting the requirements of a renewable energy resource shall be certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Each such renewable energy resource shall file with the commission within 45 days of the end of each calendar quarter an affidavit attesting to the renewable energy resources average NOx emission rate in lbs/Mmbtu for such quarter and the particulate matter emission rate test results, in lbs/Mmbtu produced in accordance with RSA 374-G:8. Upon receipt of verification of emissions from the department of environmental services, the commission shall notify the GIS of such renewable energy resource's eligibility for certificates and trading as a renewable energy resource in New Hampshire.

374-G:8 Verification of Emissions. Any source seeking to qualify as an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate continuous emissions monitors which meet department of environmental services' standards as codified in rules.

II. For particulate matter emissions, the source shall conduct stack tests in accordance with the New Hampshire department of environmental services' approved methods. Such tests shall be conducted annually for a period of 3 years. Upon completion of 3 annual tests which demonstrate compliance with the particulate matter emission rate specified in RSA 374-G:1, IV, the source may request, subject to New Hampshire department of environmental services' approval, to revise the particulate matter stack testing frequency to once every 3 years.

374-G:9 Rulemaking. The commission shall adopt rules as necessary, pursuant to RSA 541-A, to implement this program.

4 Effective Date. This act shall take effect 60 days after its passage.

EXHIBIT 4

Rec

Date: April 17, 2007
Time: 1:15 p.m.
Room: State House Rooom 100

The Senate Committee on Energy, Environment and Economic Development held a hearing on the following:

HB 873-FN-L establishing minimum renewable standards for energy portfolios.

Members of Committee present:
Senator Fuller Clark
Senator Hassan
Senator Cilley
Senator Sgambati
Senator Barnes
Senator Odell

Senator Martha Fuller Clark, D. 24: I'd like to have the attention of everyone here before I actually have Senator Hassan open the hearing on HB 873. We have allowed two hours for this bill. You will know that the House Committee had an all-day hearing on this legislation, at which the members heard overwhelming support for the RPS bill. So far, looking at our list, that no one has signed up in opposition to this bill. So when many of you might like to speak, it's really important that we bring this hearing to a close around quarter of three, if at all possible. So I really would encourage you, if you have written testimony, to hand it in; but we'd like to be able to move this bill forward.

And so I just wanted -- and the first part of the hearing testimony will be an explanation for the Committee members from both Joanne Morin, from the Department of DES, who has provided extraordinary leadership as we have shaped and reshaped and reshaped this legislation, and also then from Ross Gittell, who will provide the information that looks at the economic impact. And then, after, but we'll let the sponsors or co-sponsors to be able to speak first, just to open the hearing, and then we will call on other individuals. So just so that you have a sense of how we're going to proceed, I wanted to lay that out at the very beginning. And now I would like Senator Hassan to open the hearing.

WHEREUPON, the hearing was formally opened by Vice-Chair, Senator Margaret Hassan, who recognized Senate sponsor, Senator Martha Fuller Clark, to introduce the legislation.

Senator Martha Fuller Clark, D. 24: I'd like to ask Susan -- Suzanne Harvey to come up with me, since we are the lead sponsors in both the House and the Senate.

Senator Margaret Wood Hassan, D. 23: And I should have said the prime -- Senate sponsor; Representative Harvey is the prime sponsor. Thank you.

Senator Martha Fuller Clark, D. 24: Representative Harvey and I are here today to speak in favor of HS 873-FN-L. I wanted to let you know that the five other New England states have had a renewable portfolio standards legislation on their books for a number of years. There has been an effort in the past for New Hampshire to also provide such incentive as part of state policy. I believe that our current legislation, which has really been crafted after looking at the successes and strengths of the other RPS legislation, not only in New England but in New Jersey and New York, that this is an excellent piece of legislation, because there were fourteen months put into crafting this legislation and many, many meetings with a variety of stakeholders to bring forth a very complex bill that we have before you today.

I think it's important to understand that the purpose of the bill is to spur economic development, reduce our dependence on imported fuel, mitigate energy prices and supply volatility, and reduce air emissions from our energy supply. I also think it's important to realize that the credits, that they have been formulated in this bill are directed so that New Hampshire can take maximum advantages of the many renewable energy resources that are available in this state. And that was a key component as we moved forward in this bill.

As I said to you, we have had excellent input from the Department of Environmental Services. In moving this bill forward, I have had extraordinary education, as I'm sure Suzanne feels as well, about this whole initiative and how, um, and why it's so necessary that we bring it forward to you at this time. Certainly, we saw last year what happened with our over-dependence on natural gas and home-heating oil from foreign sources, and we had no, or very limited alternatives in place to address this. It also clearly fits it in with the Governor's plan to have us move our energy availability, in terms of generation, to come from "25 x 25" of renewable resources.

You will see at the end of the bill as amended in the House that there is a fiscal note attached to it, and I would just like to point out to you the

language in that fiscal note at the beginning ... on page 12, which says that: "The Public Utilities Commission and the Department of Environmental Services states that this bill may increase state, county and local expenditures by an indeterminable amount in FY2008 and each year thereafter." And whether or not this bill will have no fiscal impact on state and county and local revenues, the issue is that, that this bill will only begin to have a financial impact in the year 2010, more than likely, and so that currently there is no impact on the state budget.

You will have the opportunity to hear from Professor Gittell from the UNH Whittemore School of Business and Economics, that shows how a small short-term cost is part of this legislation. But the whole purpose is to position us in the long term to be able to have lower energy costs in this state. There is no perfect bill, and we recognize that there may be the need to review this legislation in the future and make some changes or adjustments, and you will see that there is language in the bill that calls upon the PUC to re-evaluate this program in the year 2013.

So, with that, I'm going to conclude my testimony and turn it over to Suzanne Harvey, Representative Harvey, who has done a most admirable job of shepherding this bill through the House. So, thank you very much, and thank you, Suzanne.

Representative Suzanne Harvey, Hills/21: Thank you, Madam Chair, members of the Committee. For the record, I'm Representative Suzanne Harvey from Hillsborough 21, which is Nashua's Ward 2. And I, without trying to repeat anything that the Senator said, I do want to point out that I think HB 873 and the RPS is one important piece, one part of the solution to New Hampshire's energy future. There's a lot of different parts that have to fall together before New Hampshire is really secure with its energy, but this is a big part of it. And to me, a vote to pass this RPS is a vote for clean, renewable energy in the Granite State; a vote for in-state economic development, and a vote for energy diversity and less dependence on imported fuels.

As the Senator said, we had hours and hours of stakeholder meetings over many, many months. And among the people who participated in that, including the sponsors and other representatives, we had representatives from the utilities, trade associations, renewable developers, energy suppliers and environmental groups, plus significant help from DES, the PUC, the Office of Energy Planning, and the Office of Consumer Advocate. So we had a real big cross-section of stakeholders from all different angles coming to say what they would like in the bill, every one was listened to, all input was

considered, and we looked at what was the best for the interests of the Granite State. It was truly a collaborative effort in the truest sense.

The House Science, Technology and Energy Committee, of which I am vice-chair, held a full-day hearing for the bill in Reps' Hall, where we heard overwhelming support for the bill. Especially in terms of a New Hampshire RPS; there wasn't anyone who spoke against having an RPS in the state. The Committee voted 14 to 1, Ought to Pass, and then the House passed it, 253 to 37, which we were all very, very pleased with.

And, also, since New Hampshire is the only state in New England not yet to have an RPS, we had the benefit of reviewing other states' RPS plans and looking at what was working, what wasn't working, and structuring our bill to try to make it as best as we can for the future, for now and the future. We also had the economic analysis which was a great help, and you'll hear more about that later.

The RPS, what is it? Simply stated, it requires the state's electricity providers to offer a specific percentage of their energy from renewable energy sources. And the providers qualify for RECs, or renewable energy certificates, for each megawatt hour generated from renewable sources. This is where we hope to see a big incentive to our existing renewable sources so that they can be players in the regional market, and also to incent newcomers to come develop renewable facilities in the state. This is a regional market program, administered by ISO-New England, which tracks each megawatt of energy generated onto the electrical grid and issues the certificate. The certificates can be sold to other entities that cannot meet their renewable requirement.

So our proposed RPS program starts at a baseline percentage of renewables required, starting in 2008, and goes out to 2025, going up in percent where we reach almost 24 percent of our energy coming from renewable. And by including a broad selection of renewable sources, such as wind, solar, geothermal, biomass, hydroelectric and others, as eligible for RECs, the New Hampshire RPS maximizes our natural resources, giving parity to our existing sources by incenting management to add incremental capacity. And, again, just as important, we hope this will encourage new projects to be built. Personally, I have been getting calls from people out of state, really interested in this and wondering what's happening with the bill.

In conclusion, I hope that you will support HB 873 and allow New Hampshire to join the regional RPS market and ensure that Granite-Staters will have the benefit of increased use of clean, renewable energy, will have good jobs coming with this, and tax revenue. Joining the House in its Ought-to-Pass

vote for the RPS is a vote for economic development, energy security and reduced dependene on imported fuels, a hedge against rising and volatile energy costs, and a reduction of greenhouse gas emissions in our state. Thank you.

Senator Margaret Wood Hassan, D. 23: Questions. Senator Barnes.

Senator John S. Barnes, Jr., D. 17: Thank you, Madam Chair. The other New England states have this, is that correct?

Representative Suzanne Harvey: Yes.

Senator John S. Barnes, Jr., D. 17: Could you tell me what their build-out year is, what's ...

Representative Suzanne Harvey: Oh, I think each one is different. Every state customizes, number one, what they ... what they will accept as a renewable energy for credit, and also customizes the percentages, when they start and where they end, and at what year. So they're all different.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Margaret Wood Hassan, D. 23: Any further questions. Seeing none, thank you both for your testimony.

Representative Suzanne Harvey: Thank you.

(Please see written testimony of Representative Harvey attached hereto as Attachment #1.)

Senator Margaret Wood Hassan, D. 23: And I think while they come back up, Joanne Morin and Bob Scott from DES.

Mr. Robert Scott, Director, Air Resources Division, NH Department of Environmental Services: Good morning -- ah, excuse me, good afternoon. My name is Bob Scott, I'm the director of the Air Resources Division with the New Hampshire Department of Environmental Services. I have some information being passed out, and, Senator Barnes, we have a graphic that shows exactly, I think, what you just asked that will answer your question directly.

Senator John S. Barnes, Jr., D. 17: Thank you very much.

Director Robert Scott: Very briefly, and again I know we're on a very quick time schedule here, so I'll try to hit some highlights that maybe haven't been hit as much on an RPS, Renewable Portfolio Standard. A couple things that I think you all know this from other hearings: obviously, New Hampshire is well placed for renewables, biomass, hydro, wind, tidal; there's a lot of things going on that can be, and should be, I think, the New Hampshire advantage. Fuel diversities, as you're aware, is a large concern in making sure we have a good energy portfolio. This goes towards that goal. Energy independence, which has been mentioned, is extremely important. Our estimate is that New Hampshire, in excess of $500 million, or half a billion dollars a year, go outside or offshore for fossil fuels. That's a lot of money that could potentially be reinvested in the state with a program like Renewable Portfolio Standards. I want to pose that question.

Also, another good advantage, other than certainly -- and I apologize for not mentioning this, the Department of Environmental Services, clearly clean air, as the air director, is one of my goals, and this is what we think helps a lot in this direction. Also, on climate change. You've heard a lot about climate change; this is a real tangible thing we can do, right now, to help address climate change; renewable energy sources that are in this bill, all are climate-neutral, yet produce power rather than adding to the climate issue with greenhouse gases.

Similarly, this bill -- I have called it in the House an "insurance policy." Why I say that is, this is a hedge; the more renewable energy you have in your portfolio as a state, the less susceptible you are to changes in fossil fuels, whether it's foreign issues, whether it's a war or crises in other parts of the globe, or a natural disaster like a "Katrina." So I have characterized this in the past, and I think it still is a fitting characterization, that an RPS is like an insurance company (sic): yes, it will cost you something, just like an insurance policy does; but it also, the reason why you pay into an insurance policy is that you have a good feeling that you're going to save money in the long term by insuring against these type of fluctuations. And that's exactly what this does.

We do have UNH here, and Ross Gittell, and he'll elaborate on that. Briefly, again, I know this has been discussed, that the program itself would set a percentage of all power sold in New Hampshire would have to meet the standards for renewable energy, and this would ratchet up in time. Given that as power goes on the grid, it's a regional grid, and you can't know where this electron came from; there's a separate system called a "renewable energy credit," or a "REC" you'll hear discussed that is the commodity that's sold.

rec

The New Hampshire version of this RPS -- again, there's 23 other states that have done this already -- looks at not only incentivizing new renewable projects, but the thought was to also make sure that existing renewable energy providers here in the state are viable, also. There didn't seem much sense in incenting new development if the old development doing the same thing goes away.

This is not a free ride. For biomass plants, and again, I can talk about air pollution, New Hampshire has strict particulate matter and NOx controls that are required in order to certify for the New Hampshire program. And, similarly, even for the hydroelectric facilities that qualify, there's requirements for fish ladders. So these are expenditures, and there's a requirement for these sources to go above and beyond what they normally perhaps would be required.

As I mentioned, the REC market is a regional market. And with that, other states, facilities in other states, may be able to qualify and purchase New Hampshire credits. Similarly, (indiscernible) right now, Whitefield Power & Light in Whitefield, New Hampshire, and the new Northern Wood Project in, at Portsmouth, the old Schiller Station, both are selling into other states' markets right now. But that's where, again, what we tried to do, this bill has by some been criticized being: gee, this is a little complicated. Well, one of the reasons is the bill attempts to strike a balance: on one level we want more renewable energy for all the reasons I just discussed; on the other hand, we want to direct as much as possible, keeping interstate commerce regulations in mind, to direct these same funds to New Hampshire where possible. So with that, we have different classes, different categories, and, yes, frankly, this complicates the bill a little bit, but the intention is to have New Hampshire money, as much as possible, go into New Hampshire facilities. And that's the balance. As a free-market economist -- and I won't speak for Ross Gittell who will speak soon here -- generally, they would say no barriers whatsoever and let the market do its thing. But there's the tension right there; and that's why the bill is a little bit more complicated than some might suggest.

To assure again, that we get the percentages right, how we do this right, as mentioned, there are three required review periods where the Public Utilities Commission is required to open a docket and look at the program and make sure it's doing what we expect it to do; make sure the percentages are correct, make sure the prices make sense for New Hampshire; the costs, if there are any, or the benefits. And that's required at three different times: 2011, 2018 and 2025; and they're required to make recommendations to the General Court. And it's our hope to be -- again, we know this is probably not perfect,

we want to move ahead; we spent a lot of time on this, and this is our hope to, okay, if we do need to make a correction, there's a mechanism in place.

A couple other minor points. A lot of the comments we received over the past two years while working on this type of bill include some comments that long-term purchase power agreements could be a benefit to the ratepayers, so in this bill there's not a requirement, but there's ability for the voluntary use of long-term contracts. So this is removing a potential regulatory barrier, letting those who wish to enter into these contracts do that. Again, it's not a requirement.

Similarly, there are many who have commented that thermal energy from renewable sources, where are they, where are they in this mix? We agree that's an important part of this; the concern is, however, that's a very complicated part of this, and so the response was to put in here extra language to require a study to look at that very thing. So, again, how much can you do in one bill. Those are some of the major comments that have been done.

As has been mentioned, this is going on two years' worth of effort. Last year there was SB 314 for a renewable portfolio bill; we literally had dozens of stakeholder organizations involved, all supporting this bill. So, in summary, again, I think not only-- clearly, again we're the environmental agency, this bill is good for the environment; it really can be good for the New Hampshire economy, and I think that's -- given the world situation, our energy situation, those are important considerations.

In the packages that you have, again, are our testimony letter; we also have handouts of the report that UNH worked at our request, looking at the economics of an RPS. In the House last year, one of the House members and committee, in committee, made the comment: gee, this is good, I'm hearing a lot of environmental and conservation groups saying RPS is good for New Hampshire, I'd really like an economist to tell me this is good for New Hampshire; and I said, you know, you're right. So over the summer we worked with UNH and he was able to do this study which he'll talk about soon.

Also in your handout is a -- in 2002 there was a study on the economics of Renewable Portfolio Standards in the low-grade wood products industry by Eric Kingsley, and I gave you just the executive summary, along with, on the bottom there's a web site, also, so if anybody wants to see the full report. But that also bears out that financially this makes sense for New Hampshire. And, finally, I've done most the talking, but Joanne Morin here on my staff has been the brains of the outfit, as has been mentioned, and certainly within

the constraints of time we have a handout with some of the highlights of the bill, again, kind of summarizing it, but we can answer any detailed questions that you have. I don't want to cut your questions short; I just want to move along for time. So, with that, I'll end my comments, but certainly we're here for questions. And, again, we would like to bring the UNH professors to talk about the economics.

Senator Martha Fuller Clark, D. 24: I do have a question for Joanne Morin, and that is, could you briefly share with us what were some of the changes that were made in the House amendment?

Ms. Joanne Morin, New Hampshire Department of Environmental Services: The changes that were made were that the percentage for new renewables was increased over time; the percentage had stopped at 2015, it was moved up a little bit sooner, I think by one year, and increasing out to 2025, balanced by PUC reviews to see how the cost of RECs are going and see if this working in the way we thought it would, economically, so that we feel we have sort of a mechanism if it doesn't work as predicted.

Other major, we did add two more PUC reviews as well; people really thought that was a good mechanism to keep tabs on the bill and be able to adjust it over time. The purchase power agreements are long-term contracts that Bob Scott mentioned. The provision to allow those on a voluntary basis was added to the bill. In the bill that was passed ...the bill that was passed last year out of the Senate Committee because it didn't get amended in the House, there were discussions of further amendments, a municipal solid waste was one of the qualifying renewable energy resources, and that is no longer in the bill, after House discussion.

There was some slight refining of the hydroelectric category, making sure that there's adequate fish passage and language to that effect. There was a slight modification to Class II on the solar replacement; it used to say replacement of electric hot water with either the solar or biomass renewable resources. We were supportive, actually, of having that, the biomass renewable resources for replacing electric hot water, but there was a problem with that in that there is, um, outdoor wood boilers are becoming an issue and may be an issue for the State, they're uncontrolled. Bob Scott can speak to it better than I can. DES has a concern with how we're going to regulate those, and this might have been interpreted to give actually an incentive to outdoor wood burners and we need to deal with that before we get this into this bill. So we needed to take it out for now, because of that potential, unintended consequence.

We adjusted the alternative compliance payments. As you know, how you comply with this bill is either by buying RECs on the market; if RECs are not available because of a maximum price, the electric supplier can pay into an alternative compliance payment; it's basically a price cap on this, it's very common in RPS bills. And we wanted to -- we're trying to make a regional market and so we just matched our payments for new renewables to the Massachusetts market to make them more fluid and joint regional market that seems to be driving the prices as the mass market. But those are very slight adjustments.

And then, Bob Scott also spoke to the thermal study committee, and the thermal energy is energy to produce heat, if you're not familiar with that term. So, wood-pellet stoves for heating is the part that we'd like to try to get some incentive on the thermal side; in other words, producing heat with renewables. This is an electric Renewable Portfolio Standard for that study committee. So those are the main changes.

Senator Martha Fuller Clark, D. 24: Are there other questions for either Bob Scott or Joanne Morin? Senator Odell.

Senator Bob Odell, D. 8: Thank you, Madam Chair. Tell me a little bit about the fish ladders, and how important that is, and ... whether or not we've addressed the right kind of fish and things in this, I've heard we might not have, and --

(Laughter.)

Ms. Joanne Morin: I'll try. We might have to defer to stakeholders. But the idea being that we were -- the concept behind it is to incent those hydroelectric facilities that are more at risk of not being able to compete economically because they have additional requirements or that they're just very small, so that the economics are more difficult. So, and also there's a push-and-pull on hydro; you know, you know, some people think any hydro-electric is very positive renewable energy. There are some that feel that there's a environmental tradeoff in terms of impacts to streams and fishways and fish and so forth.

So what this says is that the ones that would get this RPS additional incentive would be ones that actually have both fish ladders for wild fish to migrate up and downstream. The word that was used would include things like migrating eels as well as things like salmon that spawn upstream, as opposed to eels that live upstream and go to the ocean to breed. So it's trying to do joint, as I understand it, and a stakeholder may have to -- I'm not an expert, but that's I think the layman's explanation.

Director Robert Scott: "Dianadromous" (laughing).

Ms. Joanne Morin: Diana ..., yeah. Which would include both the eels and the salmon; in other words, both the eels that need to come down and the salmon that need to come up to spawn.

Director Robert Scott: So the language now allows free flow of fish going both ways, basically.

Ms. Joanne Morin: Both ways. So we believe these to be the most -- you know, that's a lot of investment for a small dam, and those to warrant an economic incentive.

Senator Martha Fuller Clark, D. 24: Yes, follow-up.

Senator Bob Odell, D. 8: How do we get to the five megawatts, we're talking about hydro; who's included or who's not included?

Ms. Joanne Morin: We looked at that, it includes a large -- I don't have the percentage off the top of my head; we did look at New Hampshire's facilities, we believe it includes a large percentage, you know, greater than three-quarters of the facilities in New Hampshire. There are some large facilities in New Hampshire that would not be included. And we also feel there is relatively smaller competition from the other states at that level, so that's one consideration. Kind of a little bit of a favoring New Hampshire facilities.

Is it a scientific number, five versus six or seven? No. I can't say that it is. A little bit more of a level of magnitude in terms of being a very small number that everyone was comfortable with that tried to bring in as many small hydro projects in New Hampshire.

Director Robert Scott: And, again, as I mentioned, we were trying to tailor this as much as possible to New Hampshire; that overall we're worried about -- there's a concern that perhaps Quebec Hydro plants could just -- we'd basically be sending all our money to Quebec, and we didn't think that was such a good idea, so we were setting a limit, basically.

Senator Bob Odell, D. 8: Thank you. Thank you, Madam Chair.

(Please see above-referenced NH Department of Environmental Services packet attached hereto as Attachment #2.)

EXHIBIT 5

Date: February 14, 2006
Time: 3:55 P.M.
Room: LOB RM 102

The Senate Committee on Energy and Economic Development held a hearing on the following:

SB 314-FN-L establishing minimum renewable standards for energy portfolios.

Members of Committee present: Senator Odell
Senator Letourneau
Senator Boyce
Senator Bragdon
Senator Burling

The Chair, Senator Bob Odell, opened the hearing on SB 314-FN-L by calling upon the prime sponsor, Senator Fuller Clark to introduce the legislation.

Senator Martha Fuller Clark, D. 24: Thank you.

Senator Bob Odell, D. 8: Good afternoon.

Senator Martha Fuller Clark, D. 24: Thank you, very much, Senator Odell and members of the Committee. For the record, I'm Senator Martha Fuller Clark. I represent District 24, the City of Portsmouth and the surrounding seven communities. I'm here today as the prime sponsor for SB 314, which is to establish minimal renewable portfolio standards for the State of New Hampshire.

And before I begin, I just want to make sure that you have in front of you, it is not the official copy because as you're well aware, this hearing was moved up a week. But we do have this version: It says, amended 02/14/06, and I have additional copies here, they're redlined, if you would like them.

Please see Senator Martha Fuller Clark's Amended Legislation, dated 2-14-06, attached hereto and referred to as Attachment #1.

Senator Martha Fuller Clark, D. 24: No. And I'll tell you why. I think it has to do with the fact that all the other states already have their renewable energy standards in place. We've seen some companies here in New Hampshire going to Massachusetts, and going to Connecticut to be able to take advantage of those certificates, rather than making it happen here within the state. And, I think, given the scenario of the last six months, which we might not have predicted a year ago, then it makes sense to be able to move ahead as quickly as possible to allow all of these different renewable energy sources to have a crack at the support that this legislation would provide. And I think you're going to hear from a number of very innovative businesses and industries today, and the sooner that we could serve them; I think it will be better for the New Hampshire economy, better for the job market, and better our diversity of energy and of the cost process.

Senator Bob Odell, D. 8: Any other questions? Senator Letourneau.

Senator Robert J. Letourneau, D. 19: Just one. Thank you, Senator. Who wrote this language?

Senator Martha Fuller Clark, D. 24: Who wrote this language? Um, well, it was put together by Joanne Morin and Bob Scott in DES. But we also had, along the way, we've probably had three or four or five different work sessions and we have had different stakeholders suggest language. A lot of it was taken from Rhode Island, some taken from New Jersey, some taken from Connecticut, folded in to create the bill that you have before you today.

Senator Robert J. Letourneau, D. 19: Thank you, very much.

Senator Bob Odell, D. 8: Thank you, very much. Any other questions? Seeing none, thank you.

Senator Martha Fuller Clark, D. 24: You're very welcome. Thank you.

Senator Bob Odell, D. 8: I'm just going to go down the list of legislatures. Senator John Gallus has signed in, in favor, but does not wish to speak. Senator Bragdon has signed in, in favor, but does not wish to speak. Representative Susan Harvey has signed in, in favor, but does not wish to speak, and Representative Larry Ross is here, and has signed in, in favor, but does not wish to speak. And I'll call upon Alice Chamberlin from the Governor's office. She will speak in favor of the legislation. Good afternoon.

Alice Chamberlin, Governor's Office: Good afternoon. Thank you Senator, and members of the Committee. Before I read a letter from the

EXHIBIT 6

2007 SESSION

07-0208
06/04

HOUSE BILL ***873-FN-LOCAL***

AN ACT establishing minimum renewable standards for energy portfolios.

SPONSORS: Rep. Harvey, Hills 21; Rep. Phinizy, Sull 5; Rep. Borden, Rock 18; Rep. J. Garrity, Rock 6; Sen. Fuller Clark, Dist 24; Sen. Bragdon, Dist 11

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill:

I. Establishes minimum electric renewable portfolio standards.

II. Requires the commission to make reports to the general court.

III. Requires the use of renewable energy certificates.

IV. Establishes a commission to study minimum renewable standards for energy portfolios.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

07-0208
06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seven

AN ACT establishing minimum renewable standards for energy portfolios.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Chapter; Electric Renewable Portfolio Standard. Amend RSA by inserting after chapter 362-E the following new chapter:

CHAPTER 362-F

ELECTRIC RENEWABLE PORTFOLIO STANDARD

362-F:1 Purpose. The general court finds that renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality, public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

362-F:2 Definitions. In this chapter:

I. "Biomass fuels" means plant-derived fuel including clean and untreated wood such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, biogas, or liquid biofuels, but shall exclude any materials derived in whole or in part from construction and demolition debris.

II. "Certificate" means the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362-F:6.

III. "Commission" means public utilities commission.

IV. "Customer-sited source" means a source that is interconnected on the end-use customer's site of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

V. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier as defined in RSA 374-F:2, I-a.

VI. "Department" means the department of environmental services.

VII. "Eligible biomass technologies" means generating technologies that use biomass fuels as their primary fuel, provided that the generation unit:

(a) Has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and an annual average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu as measured and verified under RSA 362-F:12; and

(b) Uses any fuel other than the primary fuel only for start-up, maintenance, or other required internal needs.

VIII. "End-use customer" means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:

(a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and

(b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.

IX. "Historical generation baseline" means the average annual electrical production from a facility other than hydroelectric, stated in megawatt-hours, for the 3 years 2004 through 2006, or for the first 36 months after the facility began operation if that date is after December 31, 2001; provided that the historical generation baseline shall be measured regardless of whether or not the emissions from the facility during the baseline period meets emissions requirements of the class. Historical generation baseline for incremental hydroelectric under RSA 362-F:4, I(i) shall represent the historical average annual production over the life of the plant not attributable to the upgrade or expansion as determined during the certification process.

X. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.

XI. "New England control area" means the term as defined in ISO-New England's transmission, markets and services tariff, FERC electric tariff no. 3, section II.

XII. "Primary fuel" means a fuel or fuels, either singly or in combination, that comprises at least 90 percent of the total energy input into a generating unit.

XIII. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II.

XIV. "Renewable energy source" or "renewable source" means a class I, II, III, or IV source of electricity or electricity displacement by a class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.

XV. "Year" means a calendar year beginning January 1 and ending December 31.

362-F:3 Minimum Electric Renewable Portfolio Standards. For each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customer that year, except to the extent that the provider makes payments to the renewable energy fund under RSA 362-F:10, II:

	2008	2009	2010	2011	2012	2013	2014	2015-2025
Class I	0.0%	0.5%	1%	2%	3%	4%	5%	1.0% Additional per year
Class II	0.0%	0.0%	0.04%	0.08%	0.15%	0.2%	0.3%	0.3%
Class III	3.5%	4.5%	5.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Class IV	0.5%	1%	1%	1%	1%	1%	1%	1%

362-F:4 Electric Renewable Energy Classes.

I. Class I (New) shall include the production of electricity from any of the following, provided the source began operation after January 1, 2006, except as noted below:

(a) Wind energy.

(b) Geothermal energy.

(c) Fuel cells utilizing hydrogen derived from biomass fuels or methane gas or from electricity generated by renewable sources.

(d) Ocean thermal, wave, current, or tidal energy.

(e) Methane gas.

(f) Eligible biomass technologies having a gross nameplate capacity of 50 megawatts or less.

(g) The equivalent displacement of electricity, as determined by the commission, by end-use customers, from solar and biomass hot water heating systems used instead of electric hot water heating.

(h) Class II sources to the extent that they are not otherwise used to satisfy the minimum portfolio standards of other classes.

(i) The incremental new production of electricity in any year from an eligible biomass or methane source or any hydroelectric generating facility licensed or exempted by Federal Energy Regulatory Commission (FERC), regardless of gross nameplate capacity, over its historical generation baseline, provided the commission certifies demonstrable completion of capital investments attributable to the efficiency improvements, additions of capacity, or increased renewable energy output that are sufficient to, were intended to, and can be demonstrated to increase annual renewable electricity output. Within 45 days of receiving a request for certification under this subparagraph the commission shall employ a non-adjudicative process and complete its certification review. The determination of incremental production shall not be based on any operational changes at such facility not directly associated with the efficiency improvements or additions of capacity.

(j) The production of electricity from a class III or IV source that has been shut down for at least 3 years and significant capital investment directly related to restoring generation or increasing capacity has been made to restart the facility including department permitting requirements for new plants.

II. Class II (New Solar) shall include the production of electricity from solar technologies, provided the source began operation after January 1, 2006.

III. Class III (Existing Biomass/Methane) shall include the production of electricity from any of the following, provided the source began operation prior to January 1, 2006:

(a) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less.

(b) Methane gas.

IV. Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, and has installed federally or state mandated upstream and downstream fish passages.

V. For good cause, and after notice and hearing, the commission may accelerate or delay by up to one year, any given year's incremental increase in class I or II renewable portfolio standards requirement under RSA 362-F:3, I.

VI. After notice and hearing, the commission may modify the class III and IV renewable portfolio standards requirements under RSA 362-F:3, I for calendar years beginning January 1, 2012 such that the requirements are equal to an amount between 85 percent and 95 percent of the reasonably expected potential annual output of available eligible sources.

362-F:5 Commission Review and Report. Commencing no later than January 31, 2011, 2018, and 2025 the commission shall conduct a review of the class requirements in RSA 362-F:3, I and other aspects of the electric renewable portfolio standard program established by this chapter. Thereafter, the commission shall make a report of its findings to the general court by November 1, 2011, 2018, and 2025, respectively, including any recommendations for changes to the class requirements or other aspects of the electric renewable portfolio standard program. The commission shall review, in light of the purposes of this chapter and with due consideration of the importance of stable long-term policies:

I. The adequacy or potential adequacy of sources to meet the class requirements of RSA 362-F:3;

II. The class requirements of all sources in light of existing and expected market conditions;

III. The potential addition of a thermal energy component to the electric renewable portfolio standard;

IV. Increasing the class requirements relative to classes I and II beyond 2025;

V. The possible introduction of any new classes or the consolidation of existing ones;

VI. The experience with and an evaluation of the benefits and risks of using multi-year purchase agreements for certificates, along with purchased power, relative to meeting the purposes and goals of this chapter at the least cost to consumers and in consideration of the restructuring policy principles of RSA 374-F:3; and

VII. Alternative methods for renewable portfolio standard compliance, such as competitive procurement through a centralized entity on behalf of all consumers in all areas of the state.

362-F:6 Renewable Energy Certificates.

I. The electric renewable portfolio standard program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by ISO-New England and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking program administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to provide at least the same information on the type and generation of renewable energy resources as the GIS certificate tracking program.

II. The commission shall establish procedures by which electricity production not tracked by ISO-New England from customer-sited sources, including behind the meter production, may be included within the certificate program, provided such sources are located in New Hampshire. The procedures may include the aggregation of sources and shall be compatible with procedures of the certificate program administrator. The production shall be monitored and verified by an independent entity designated by the commission, which may include electric distribution companies.

III. The commission shall designate in a timely manner New Hampshire eligible renewable sources together with any conditions pursuant to this chapter to the certificate program administrator under RSA 362-F:3, with such sources being the recipient of all certificates issued for purpose of this chapter.

IV.(a) Certificates issued for purposes of complying with this chapter shall come from sources within the ISO-New England region unless otherwise specified or unless:

(1) A unit-specific bilateral contract for sale and delivery of a source's electrical energy to the New England control area is in place for the time period during which renewable certificates are generated; and

(2) Such contract includes associated transmission rights for delivery of the source's electrical energy over the ties from an adjacent control area to the New England control area.

(b) The commission may impose such other requirements as it deems appropriate, including methods of confirming actual delivery of the electrical energy into the New England control area.

362-F:7 Sale, Exchange, and Use of Certificates.

I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other person or entity that acquires the certificate. A certificate may only be used once for compliance with the requirements of this chapter. It may not be used for compliance with

this chapter if it has been or will be used for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired, claimed, or represented as part of any other electrical energy output or sale. Certificates shall only be used by providers of electricity for compliance with the requirements of RSA 362-F:3 in the year in which the generation represented by the certificate was produced, except that unused certificates of the proper class issued for production during the prior 2 years or the first quarter of the subsequent year may be used to meet up to 30 percent of a provider's requirements for a given class obligation in the current year of compliance.

II. Certificates from behind-the-meter distributed generation shall be initially issued to the owner of the customer-sited source or their designee, regardless of whether the source has received assistance from the renewable energy fund established in RSA 362-F:10.

362-F:8 Information Collection. By July 1 of each year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter for the prior year. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

362-F:9 Purchased Power Agreements.

I. The commission may authorize, after notice and hearing, electric distribution companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs, if it finds such agreements to be in the public interest.

II. Determination of the public interest under this section shall include but not be limited to, consideration and balancing of the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;.

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

III. The commission may authorize one or more distribution companies to coordinate or delegate procurement processes under this section.

362-F:10 Renewable Energy Fund.

I. There is hereby established a renewable energy fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section, excluding class II moneys, shall be used by the commission to support thermal and electrical renewable energy initiatives. Class II moneys shall only be used to support solar energy technologies in New Hampshire. All fund moneys including those from class II may be used to administer this chapter, but all new employee positions shall be approved by the fiscal committee of the general court.

II. In lieu of meeting the portfolio requirements of RSA 362-F:3 if, and to the extent sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph, an electricity provider may, at the time of report submission under RSA 362-F:8, make payment to the commission for the 2008 compliance year at the following rates for each megawatt-hour not met for a given class obligation through the acquisition of certificates:

(a) Class I- $56.

(b) Class II - $150.

(c) Class III - $28.

(d) Class IV - $28.

III. Beginning in 2009, the commission shall adjust these rates by January 31 of each year using the Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor.

IV. The commission shall make an annual report by October 1 of each year, beginning in 2009, to the legislative oversight committee on electric utility restructuring under RSA 374-F:5 detailing how the renewable energy fund is being used and any recommended changes to such use.

362-F:11 Application.

I. The commission, in a non-adjudicative process, shall certify the classification of an existing or proposed generation facility by issuing a determination within 45 days of receiving from an applicant sufficient information to determine its classification. The application shall contain the following:

(a) Name and address of applicant.

(b) Facility location and NEPOOL GIS identification number, if available.

(c) Description of the facility, including fuel type, gross generation capacity, initial commercial operation date, and, in the case of a biomass source, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates.

(d) Such other information as the applicant may provide to assist in determining the classification of the generating facility.

II. The commission shall certify applications of customer-sited sources in a manner that is compatible with the procedures established for recognizing such production under RSA 362-F:6, II.

III. Biomass facilities otherwise meeting the requirements of a source shall be conditionally certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Within 10 days of verification of compliance with emissions standards from the department, as provided in RSA 362-F:12, III, the commission, in a non-adjudicative process, shall designate the facility as eligible pursuant to RSA 362-F:6, III.

362-F:12 Verification of Emissions From Biomass Sources. Any source seeking to qualify using an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate a continuous emissions monitor that meets departmental standards as codified in rules.

II. For particulate matter emissions, the source shall conduct an annual stack test in accordance with methods approved by the department. Upon completion of 3 annual tests which demonstrate compliance, the source may request of the department for a decrease in the frequency of testing, but to not less than once every 3 years.

III. Each such source shall file with the department and the commission within 45 days of the end of each calendar quarter an affidavit and documentation attesting to the source's average NOx emission rate for such quarter and the most recent particulate matter stack test results. For purposes of initial certification under RSA 362-F:6, the results of a stack test may be filed with the department at any time to demonstrate compliance with both the particulate matter and nitrogen oxide emissions standards. Within 30 days of a filing, the department shall provide verification of the emissions reported in the filing to the commission.

362-F:13 Rulemaking. The commission shall adopt rules, under RSA 541-A to:

I. Administer the electric renewable portfolio standard program, including the electric renewable portfolio standard program, including the development of an alternative to the regional generation information system to the extent necessary.

II. Ascertain, monitor, and enforce compliance with the program.

III. Include within the program electric production not tracked by ISO-New England from eligible customer-sited sources.

IV. Administer the renewable energy fund and make expenditures from the fund.

V. Establish procedures for designating the classification of existing or proposed generation facilities, including any preliminary designation, and to verify the completion of capital investments required of certain class I resources.

VI. Define when a repowered generation unit qualifies as a new class I source under RSA 362-F:4.

VII. Verify emissions from biomass sources.

VIII. Otherwise discharge the responsibilities delegated to the commission under this chapter.

2 New Subparagraph; Application of Receipts; Renewable Energy Fund. Amend RSA 6:12, I(b) by inserting after subparagraph (252) the following new subparagraph:

(253) Moneys deposited in the renewable energy fund established under RSA 362-F:10.

3 Default Service. Amend RSA 374-F:3, V(c) to read as follows:

(c) Default service shall be designed to provide a safety net and to assure universal access and system integrity. Default service shall be procured through the competitive market and may be administered by independent third parties. ***Any prudent incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service shall be recovered through the default service charge.*** The allocation of the costs of administering default service shall be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures shall be used to defray stranded costs.

4 Competitive Electricity Supplier Requirement. Amend RSA 374-F:7, III to read as follows:

III. The commission may assess fines against, revoke the registration of, and prohibit from doing business in the state, any competitive electricity supplier that violates the requirements of this section ***or RSA 362-F.***

5 Thermal Renewable Study Committee; Statement of Purpose.

I.(a) Thermal renewable energy technologies provide fuel diversity to New Hampshire and New England energy supply through use of local renewable fuels and resources and have the potential to lower and stabilize future energy costs by helping to minimize regional dependence on imported fossil fuels such as natural gas, propane, and oil for heating and cogeneration.

(b) The increased use in New Hampshire and New England of thermal energy generated using low emission, renewable energy technologies will help to reduce the amount of nitrogen oxide, sulfur dioxide, particulate matter, and greenhouse gas emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health.

(c) In addition to benefits stated above, it is in the public interest to stimulate economic development by investment in low emission thermal renewable energy technologies in New England and in particular, New Hampshire.

II.(a) The office of energy and planning in consultation with the energy planning advisory board established by 2004, 164 shall study, evaluate, and make recommendations including potential legislation on:

(1) Incentives or other mechanisms that will promote the use of high efficiency thermal renewable energy technology and fuels in residential, commercial, and industrial applications;

(2) Regulatory technological or other impediments to the rapid deployment of thermal renewable energy systems; and

(3) Recommendations to the state and local governments on programs and actions that can be implemented to encourage residential, commercial, and industrial use of thermal renewable energy.

(b) The committee shall solicit advice and expertise from members of the public representing thermal energy technology and fuels and shall solicit the advice and expertise of any individual, state agency or organization, or state employee.

(c) The committee shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk. the governor. and the state library on or before November 30. 2008.

6 Effective Date.

I. Sections 1-4 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

EXHIBIT 7

07-0208
06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seven

AN ACT establishing minimum renewable standards for energy portfolios.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds that:

I. New Hampshire's electric utility restructuring policy principles in RSA 374-F:3, IX recognize that increased use of renewable resources can provide environmental, economic, and energy security benefits.

II. In 2005, 2.3 million megawatt hours of electricity was generated from renewable energy facilities, including hydroelectric, biomass, and landfill gas power plants, with a combined generating capacity of 576 megawatts. This equaled 10 percent of the total electricity generation and 20 percent of the total retail electricity sales in New Hampshire in 2005.

III. The 2002 state energy plan prepared by the governor's office of energy and community services pursuant to 2001, 121 recommended establishing a renewable portfolio standard to support indigenous renewable energy sources such as wood and hydroelectric, to encourage investments in new renewable power generation in the state, and to allow New Hampshire to benefit from the diversity, reliability, and economic benefits that come from clean power.

IV. The state energy policy commission, established by 2006, 257:1 identified in its December 1, 2006 interim report principles that the governor and general court should use to evaluate any new energy policy initiative. One principle is to increase the state's fuel diversity by reducing the fossil fuel component of the state's energy mix and promoting use of renewable energy resources to buffer against global instability.

V. The energy planning advisory board established by 2004, 164:2 received extensive comments supporting establishment of a state renewable portfolio standard during a stakeholder forum on energy policy held June 23, 2006.

VI. Governor Lynch has committed New Hampshire to a goal of meeting 25 percent of the state's energy needs from renewable energy resources by 2025. Enactment of a renewable portfolio standard in New Hampshire will be an important step in meeting this goal.

2 New Chapter; Electric Renewable Portfolio Standard. Amend RSA by inserting after chapter 362-E the following new chapter:

CHAPTER 362-F

ELECTRIC RENEWABLE PORTFOLIO STANDARD

362-F:1 Purpose. Renewable energy generation technologies can provide fuel diversity to the state and New England generation supply through use of local renewable fuels and resources that serve to displace and thereby lower regional dependence on fossil fuels. This has the potential to lower and stabilize future energy costs by reducing exposure to rising and volatile fossil fuel prices. The use of renewable energy technologies and fuels can also help to keep energy and investment dollars in the state to benefit our own economy. In addition, employing low emission forms of such technologies can reduce the amount of greenhouse gases, nitrogen oxides, and particulate matter emissions transported into New Hampshire and also generated in the state, thereby improving air quality, public health, and mitigating against the risks of climate change. It is therefore in the public interest to stimulate investment in low emission renewable energy generation technologies in New England and, in particular, New Hampshire, whether at new or existing facilities.

362-F:2 Definitions. In this chapter:

I. "Begun operation" means the date that a facility, or a capital addition thereto, for the purpose of repowering to renewable energy is first placed in service for purposes of the implementing regulations of the Internal Revenue Code of 1986, as amended.

II. "Biomass fuels" means plant-derived fuel including clean and untreated wood such as brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, biogas, or liquid biofuels, but shall exclude any materials derived in whole or in part from construction and demolition debris.

III. "Certificate" means the record that identifies and represents each megawatt-hour generated by a renewable energy generating source under RSA 362-F:6.

IV. "Commission" means public utilities commission.

V. "Customer-sited source" means a source that is interconnected on the end-use customer's site of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer.

VI. "Default service" means electricity supply that is available to retail customers who are otherwise without an electricity supplier as defined in RSA 374-F:2, I-a.

VII. "Department" means the department of environmental services.

VIII. "Eligible biomass technologies" means generating technologies that use biomass fuels as their primary fuel, provided that the generation unit:

(a) Has a quarterly average nitrogen oxide (NOx) emission rate of less than or equal to 0.075 pounds/million British thermal units (lbs/Mmbtu), and an average particulate emission rate of less than or equal to 0.02 lbs/Mmbtu as measured and verified under RSA 362-F:12; and

(b) Uses any fuel other than the primary fuel only for start-up, maintenance, or other required internal needs.

IX. "End-use customer" means any person or entity that purchases electricity supply at retail in New Hampshire from another person or entity but shall not include:

(a) A generating facility taking station service at wholesale from the regional market administered by the independent system operator (ISO-New England) or self-supplying from its other generating stations; and

(b) Prior to January 1, 2010, a customer who purchases retail electricity supply, other than default service under a supply contract executed prior to January 1, 2007.

X. "Historical generation baseline" means:

(a) The average annual electrical production from a facility other than hydroelectric, stated in megawatt-hours, for the 3 years 2004 through 2006, or for the first 36 months after the facility began operation if that date is after December 31, 2001; provided that the historical generation baseline shall be measured regardless of whether or not the emissions from the facility during the baseline period meets emissions requirements of the class.

(b) The average annual production of a hydroelectric facility from the later of January 1, 1986 or the date of first commercial operation through December 31, 2005. If the hydroelectric facility experienced an upgrade or expansion during the historical generation baseline period, actual generation for that entire period shall be adjusted to estimate the average annual production that would have occurred had the upgrade or expansion been in effect during the entire historical generation baseline period.

XI. "Methane gas" means biologically derived methane gas from anaerobic digestion of organic materials from such sources as yard waste, food waste, animal waste, sewage sludge, septage, and landfill waste.

XII. "New England control area" means the term as defined in ISO-New England's transmission, markets and services tariff, FERC electric tariff no. 3, section II.

XIII. "Primary fuel" means a fuel or fuels, either singly or in combination, that comprises at least 90 percent of the total energy input into a generating unit.

XIV. "Provider of electricity" means a distribution company providing default service or an electricity supplier as defined in RSA 374-F:2, II.

XV. "Renewable energy source," "renewable source," or "source" means a class I, II, III, or IV source of electricity or electricity displacement by a class I source under RSA 362-F:4, I(g). An electrical generating facility, while selling its electrical output at long-term rates established before January 1, 2007 by orders of the commission under RSA 362-A:4, shall not be considered a renewable source.

XVI. "Year" means a calendar year beginning January 1 and ending December 31.

362-F:3 Minimum Electric Renewable Portfolio Standards. For each year specified in the table below, each provider of electricity shall obtain and retire certificates sufficient in number and class type to meet or exceed the following percentages of total megawatt-hours of electricity supplied by the provider to its end-use customer that year, except to the extent that the provider makes payments to the renewable energy fund under RSA 362-F:10, II:

	2008	2009	2010	2011	2012	2013	2014	2015	2025
Class I	0.0%	0.5%	1%	2%	3%	4%	5%	6%	16%(*)
Class II	0.0%	0.0%	0.04%	0.08%	0.15%	0.2%	0.3%	0.3%	0.3%
Class III	3.5%	4.5%	5.5%	6.5%	6.5%	6.5%	6.5%	6.5%	6.5%
Class IV	0.5%	1%	1%	1%	1%	1%	1%	1%	1%

* Class I increases an additional one percent per year from 2015 through 2025. Classes II-IV remain at the same percentages from 2015 through 2025 except as provided in RSA 362-F:4, V-VI.

362-F:4 Electric Renewable Energy Classes.

I. Class I (New) shall include the production of electricity from any of the following, provided the source began operation after January 1, 2006, except as noted below:

(a) Wind energy.

(b) Geothermal energy.

(c) Hydrogen derived from biomass fuels or methane gas.

(d) Ocean thermal, wave, current, or tidal energy.

(e) Methane gas.

(f) Eligible biomass technologies.

(g) The equivalent displacement of electricity, as determined by the commission, by end-use customers, from solar hot water heating systems used instead of electric hot water heating.

(h) Class II sources to the extent that they are not otherwise used to satisfy the minimum portfolio standards of other classes.

(i) The incremental new production of electricity in any year from an eligible biomass or methane source or any hydroelectric generating facility licensed or exempted by Federal Energy Regulatory Commission (FERC), regardless of gross nameplate capacity, over its historical generation baseline, provided the commission certifies demonstrable completion of capital investments attributable to the efficiency improvements, additions of capacity, or increased renewable energy output that are sufficient to, were intended to, and can be demonstrated to increase annual renewable electricity output. The determination of incremental production shall not be based on any operational changes at such facility but rather on capital investments in efficiency improvements or additions of capacity.

(j) The production of electricity from a class III or IV source that has begun operation as a new facility by demonstrating that 80 percent of its resulting tax basis of the source's plant and equipment, but not its property and intangible assets, is derived from capital investment directly related to restoring generation or increasing capacity including department permitting requirements for new plants. Such production shall not qualify for class III or IV certificates.

II. Class II (New Solar) shall include the production of electricity from solar technologies, provided the source began operation after January 1, 2006.

III. Class III (Existing Biomass/Methane) shall include the production of electricity from any of the following, provided the source began operation prior to January 1, 2006:

(a) Eligible biomass technologies having a gross nameplate capacity of 25 MWs or less.

(b) Methane gas.

IV. Class IV (Existing Small Hydroelectric) shall include the production of electricity from hydroelectric energy, provided the source began operation prior to January 1, 2006, has a gross nameplate capacity of 5 MWs or less, has installed upstream and downstream dianadromous fish passages that have been required and approved under the terms of its license or exemption from the Federal Energy Regulatory Commission, and when required, has documented applicable state water quality certification pursuant to section 401 of the Clean Water Act for hydroelectric projects.

V. For good cause, and after notice and hearing, the commission may accelerate or delay by up to one year, any given year's incremental increase in class I or II renewable portfolio standards requirement under RSA 362-F:3.

VI. After notice and hearing, the commission may modify the class III and IV renewable portfolio standards requirements under RSA 362-F:3 for calendar years beginning January 1, 2012 such that the requirements are equal to an amount between 85 percent and 95 percent of the reasonably expected potential annual output of available eligible sources after taking into account demand from similar programs in either states.

362-F:5 Commission Review and Report. Commencing in January 2011, 2018, and 2025 the commission shall conduct a review of the class requirements in RSA 362-F:3 and other aspects of the electric renewable portfolio standard program established by this chapter. Thereafter, the commission shall make a report of its findings to the general court by November 1, 2011, 2018, and 2025, respectively, including any recommendations for changes to the class requirements or other aspects of the electric renewable portfolio standard program. The commission shall review, in light of the purposes of this chapter and with due consideration of the importance of stable long-term policies:

I. The adequacy or potential adequacy of sources to meet the class requirements of RSA 362-F:3;

II. The class requirements of all sources in light of existing and expected market conditions;

III. The potential for addition of a thermal energy component to the electric renewable portfolio standard;

IV. Increasing the class requirements relative to classes I and II beyond 2025;

V. The possible introduction of any new classes such as an energy efficiency class or the consolidation of existing ones;

VI. The timeframe and manner in which new renewable class I and II sources might transition to and be treated as existing renewable sources and if appropriate, how corresponding portfolio standards of new and existing sources might be adjusted;

VII. The experience with and an evaluation of the benefits and risks of using multi-year purchase agreements for certificates, along with purchased power, relative to meeting the purposes and goals of this chapter at the least cost to consumers and in consideration of the restructuring policy principles of RSA 374-F:3; and

VIII. Alternative methods for renewable portfolio standard compliance, such as competitive procurement through a centralized entity on behalf of all consumers in all areas of the state.

362-F:6 Renewable Energy Certificates.

I. The electric renewable portfolio standard program established in this chapter shall utilize the regional generation information system (GIS) of energy certificates administered by ISO-New England and the New England Power Pool (NEPOOL) or their successors. If the regional GIS certificate tracking program administered by the ISO-New England is no longer operational or accessible, the commission shall develop an alternative certificate program, after public notice and hearing, designed to provide at least the same information on the type and generation of renewable energy resources as the GIS certificate tracking program.

II. The commission shall establish procedures by which electricity production not tracked by ISO-New England from customer-sited sources, including behind the meter production, may be included within the certificate program, provided such sources are located in New Hampshire. The procedures may include the aggregation of sources and shall be compatible with procedures of the certificate program administrator. The production shall be monitored and verified by an independent entity designated by the commission, which may include electric distribution companies.

III. The commission shall designate in a timely manner New Hampshire eligible renewable sources together with any conditions pursuant to this chapter to the certificate program administrator under paragraph I, with such sources being the recipient of all certificates issued for purpose of this chapter.

IV.(a) Certificates issued for purposes of complying with this chapter shall come from sources within the New England control area unless the source is located in a control area adjacent to the New England control area and the energy produced by the source is actually delivered into the New England control area for consumption by New England customers. The delivery of such energy from the source into the New England control area shall be verified by:

(1) A unit-specific bilateral contract for sale and delivery of a source's electrical energy to the New England control area is in place for the time period during which renewable certificates are generated;

(2) Confirmation from ISO-New England that the sale of the renewable energy was actually settled in the ISO market system; and

(3) Confirmation through the North American Electric Reliability Corporation tagging system that the import of energy into the New England control area actually occurred.

(b) The commission may impose such other requirements as it deems appropriate, including methods of confirming actual delivery of the electrical energy into the New England control area.

362-F:7 Sale, Exchange, and Use of Certificates.

I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other person or entity that acquires the certificate. A certificate may only be used once for compliance with the requirements of this chapter. It may not be used for compliance with this chapter if it has been or will be used for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired, claimed, or represented as part of any other electrical energy output or sale. Certificates shall only be used by providers of electricity for compliance with the requirements of RSA 362-F:3 in the year in which the generation represented by the certificate was produced, except that unused certificates of the proper class issued for production during the prior 2 years or the first quarter of the subsequent year may be used to meet up to 30 percent of a provider's requirements for a given class obligation in the current year of compliance.

II. Certificates from behind-the-meter distributed generation shall be initially issued to the owner of the customer-sited source or their designee, regardless of whether the source has received assistance from the renewable energy fund established in RSA 362-F:10.

362-F:8 Information Collection. By July 1 of each year, each provider of electricity shall submit a report to the commission, in a form approved by the commission, documenting its compliance with the requirements of this chapter for the prior year. The commission may investigate compliance and collect any information necessary to verify and audit the information provided to the commission by providers of electricity.

362-F:9 Purchased Power Agreements.

I. Upon the request of one or more electric distribution companies and after notice and hearing, the commission may authorize such company or companies to enter into multi-year purchase agreements with renewable energy sources for certificates, in conjunction with or independent of purchased power agreements from such sources, to meet reasonably projected renewable portfolio requirements and default service needs to the extent of such requirements, if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest.

II. In determining the public interest, the commission shall find that the proposal is, on balance, substantially consistent with the following factors:

(a) The efficient and cost-effective realization of the purposes and goals of this chapter;

(b) The restructuring policy principles of RSA 374-F:3;

(c) The extent to which such multi-year procurements are likely to create a reasonable mix of resources, in combination with the company's overall energy and capacity portfolio, in light of the energy policy set forth in RSA 378:37 and either the distribution company's integrated least cost

resource plan pursuant to RSA 378:37-41, if applicable, or a portfolio management strategy for default service procurement that balances potential benefits and risks to default service customers;

(d) The extent to which such procurement is conducted in a manner that is administratively efficient and promotes market-driven competitive innovations and solutions; and

(e) Economic development and environmental benefits for New Hampshire.

III. The commission may authorize one or more distribution companies to coordinate or delegate procurement processes under this section.

IV. Rural electric cooperatives for which a certificate of deregulation is on file with the commission shall not be required to seek commission authorization for multi-year purchased power agreements or certificate purchase agreements under this paragraph.

362-F:10 Renewable Energy Fund.

I. There is hereby established a renewable energy fund. This nonlapsing, special fund shall be continually appropriated to the commission to be expended in accordance with this section. The state treasurer shall invest the moneys deposited therein as provided by law. Income received on investments made by the state treasurer shall also be credited to the fund. All payments to be made under this section shall be deposited in the fund. The moneys paid into the fund under paragraph II of this section, excluding class II moneys, shall be used by the commission to support thermal and electrical renewable energy initiatives. Class II moneys shall only be used to support solar energy technologies in New Hampshire. All initiatives supported out of these funds shall be subject to audit by the commission as deemed necessary. All fund moneys including those from class II may be used to administer this chapter, but all new employee positions shall be approved by the fiscal committee of the general court.

II. In lieu of meeting the portfolio requirements of RSA 362-F:3 for a given year if, and to the extent sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph, an electricity provider may, at the time of report submission for that year under RSA 362-F:8, make payment to the commission at the following rates for each megawatt-hour not met for a given class obligation through the acquisition of certificates:

(a) Class I- $57.12.

(b) Class II - $150.

(c) Class III - $28.

(d) Class IV - $28.

III. Beginning in 2008, the commission shall adjust these rates by January 31 of each year using the Consumer Price Index as published by the Bureau of Labor Statistics of the United States Department of Labor.

IV. The commission shall make an annual report by October 1 of each year, beginning in 2009, to the legislative oversight committee on electric utility restructuring under RSA 374-F:5 detailing how the renewable energy fund is being used and any recommended changes to such use.

362-F:11 Application.

I. The commission, in a non-adjudicative process, shall certify the classification of an existing or proposed generation facility by issuing a determination within 45 days of receiving from an applicant sufficient information to determine its classification. The application shall contain the following:

(a) Name and address of applicant.

(b) Facility location, ISO–New England asset identification number, and NEPOOL GIS facility code, if available.

(c) Description of the facility, including fuel type, gross generation capacity, initial commercial operation date, and, in the case of a biomass source, NOx and particulate matter emission rates and a description of pollution control equipment or practices proposed for compliance with applicable NOx and particulate matter emission rates.

(d) Such other information as the applicant may provide to assist in determining the classification of the generating facility.

II. The commission shall certify applications of customer-sited sources in a manner that is compatible with the procedures established for recognizing such production under RSA 362-F:6, II.

III. Biomass facilities otherwise meeting the requirements of a source shall be conditionally certified by the commission subject to compliance with the applicable NOx and particulate matter emission standards. Within 10 days of verification of compliance with emissions standards from the department, as provided in RSA 362-F:12, III, the commission, in a non-adjudicative process, shall designate the facility as eligible pursuant to RSA 362-F:6, III.

362-F:12 Verification of Emissions From Biomass Sources. Any source seeking to qualify using an eligible biomass technology shall verify emissions in accordance with the following methods:

I. For nitrogen oxide emissions, the source shall install and operate a continuous emissions monitor that meets departmental standards as codified in rules.

II. For particulate matter emissions, the source shall conduct an annual stack test in accordance with methods approved by the department. Upon completion of 3 annual tests which demonstrate compliance, the source may request of the department for a decrease in the frequency of testing, but to not less than once every 3 years.

III. Each such source shall file with the department and the commission within 45 days of the end of each calendar quarter an affidavit and documentation attesting to the source's average NOx emission rate for such quarter and the most recent particulate matter stack test results. For purposes of initial certification under RSA 362-F:6, the results of a stack test may be filed with the department at any time to demonstrate compliance with both the particulate matter and nitrogen oxide emissions standards. Within 30 days of a filing, the department shall provide verification of the emissions reported in the filing to the commission.

362-F:13 Rulemaking. The commission shall adopt rules, under RSA 541-A to:

I. Administer the electric renewable portfolio standard program including the development of an alternative to the regional generation information system to the extent necessary.

II. Ascertain, monitor, and enforce compliance with the program to the extent not addressed in the department's rules.

III. Include within the program electric production not tracked by ISO-New England from eligible customer-sited sources.

IV. Administer the renewable energy fund and make expenditures from the fund.

V. Establish procedures for the classification of existing or proposed generation facilities, including a provision for a preliminary designation option, and to verify the completion of capital investments required of certain class I resources.

VI. Define when a repowered generation unit qualifies as a new class I source under RSA 362-F:4.

VII. Otherwise discharge the responsibilities delegated to the commission under this chapter.

3 New Subparagraph; Application of Receipts; Renewable Energy Fund. Amend RSA 6:12, I(b) by inserting after subparagraph 252 the following new subparagraph:

(253) Moneys deposited in the renewable energy fund established under RSA 362-F:10.

4 Default Service. Amend RSA 374-F:3, V(c) to read as follows:

(c) Default service should be designed to provide a safety net and to assure universal access and system integrity. Default service should be procured through the competitive market and may be administered by independent third parties. ***Any prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge.*** The allocation of the costs of administering default service should be borne by the customers of default service in a manner approved by the commission. If the commission determines it to be in the public interest, the commission may implement measures to discourage misuse, or long-term use, of default service. Revenues, if any, generated from such measures should be used to defray stranded costs.

5 Competitive Electricity Supplier Requirement. Amend RSA 374-F:7, III to read as follows:

III. The commission is authorized to assess fines against, revoke the registration of, and prohibit from doing business in the state, any competitive electricity supplier which violates the requirements of this section ***or RSA 362-F.***

6 Thermal Renewable Study; Statement of Purpose.

I.(a) Thermal renewable energy technologies provide fuel diversity to New Hampshire and New England energy supply through use of local renewable fuels and resources and have the potential to lower and stabilize future energy costs by helping to minimize regional dependence on imported fossil fuels such as natural gas, propane, and oil for heating and cogeneration.

(b) The increased use in New Hampshire and New England of thermal energy generated using low emission, renewable energy technologies will help to reduce the amount of nitrogen oxide, sulfur dioxide, particulate matter, and greenhouse gas emissions transported into New Hampshire and also generated in the state, thereby improving air quality and public health.

(c) In addition to benefits stated above, it is in the public interest to stimulate economic development by investment in low emission thermal renewable energy technologies in New England and in particular, New Hampshire.

II.(a) The office of energy and planning in consultation with the energy planning advisory board established by 2004, 164 shall study, evaluate, and make recommendations including potential legislation on:

(1) A thermal renewable portfolio standard and other incentives or mechanisms that will promote the use of high efficiency low emission thermal renewable energy technology and fuels in residential, commercial, and industrial applications;

(2) Regulatory, technological, or other impediments to the rapid deployment of thermal renewable energy systems; and

(3) Recommendations to the state and local governments on programs and actions that can be implemented to encourage residential, commercial, and industrial use of thermal renewable energy.

(b) The office of energy and planning shall solicit advice and expertise from members of the public representing thermal energy technology and fuels and may solicit the advice and expertise of any individual, state agency or organization, or state employee.

(c) The office of energy and planning shall report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 30, 2008.

7 Effective Date.

I. Sections 1-4 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

EXHIBIT 8

- Email Alert Network
- SED Home
- About Us
- Renewable Energy
- Renewable Energy Fund
- Renewable Energy Rebates
- Greenhouse Gas Emissions Reduction Fund
- Energy Codes
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Home > Sustainable Energy > Electric Renewable Portfolio Standard (RPS)

Electric Renewable Portfolio Standard (RPS)

New Hampshire 's RPS statute, RSA 362-F, requires each electricity provider to meet customer load by purchasing or acquiring certificates representing generation from renewable energy based on total megawatt-hours supplied. New Hampshire 's RPS statute divides renewable energy sources into four separate classes that include the following:

- Class I resources include generation facilities that began operation after January 1, 2006 and produce electricity from: wind energy; geothermal energy; hydrogen derived from biomass fuel or methane gas; ocean thermal, wave, current, or tidal energy; methane gas; or biomass. Displacement of electricity by end-use customers from solar hot water heating systems, incremental new production from Class III and IV sources, and existing hydropower and biomass facilities that began operation as a new facility through capital investment also qualify as class I sources.
- Class II sources include generation facilities that produce electricity from solar technologies and began operation after January 1, 2006 .
- Class III sources include generation facilities that began operation on or before January 1, 2006 and produce electricity from eligible biomass technologies having a gross nameplate capacity of 25 megawatts or less or methane gas facilities.
- Class IV sources include hydroelectric generation facilities that began operation on or before January 1, 2006 and have a gross nameplate capacity of 5 megawatts or less, has installed upstream and downstream diadromous fish passages approved by FERC and have obtained all necessary water quality certifications under section 401 of the Clean Water Act.

For 2008, the total RPS obligation is 4.0 percent of total generation supplied to customers. The RPS requirement increases to 7.5% for 2010, 13.8% for 2015 and 23.8% for 2025. The RPS obligations by class and year are:

Calendar Year	Class I	Class II	Class III	Class IV
2008	0.0%	0.0%	3.5%	0.5%
2009	0.5%	0.0%	4.5%	1.0%
2010	1.0%	0.04%	5.5%	1.0%
2011	2.0%	0.08%	6.5%	1.0%
2012	3.0%	0.15%	6.5%	1.0%
2013	4.0%	0.2%	6.5%	1.0%
2014	5.0%	0.3%	6.5%	1.0%
2015	6.0%	0.3%	6.5%	1.0%
2016	7.0%	0.3%	6.5%	1.0%
2017	8.0%	0.3%	6.5%	1.0%
2018	9.0%	0.3%	6.5%	1.0%
2019	10.0%	0.3%	6.5%	1.0%
2020	11.0%	0.3%	6.5%	1.0%
2021	12.0%	0.3%	6.5%	1.0%
2022	13.0%	0.3%	6.5%	1.0%
2023	14.0%	0.3%	6.5%	1.0%
2024	15.0%	0.3%	6.5%	1.0%
2025	16.0%	0.3%	6.5%	1.0%

Under the RPS statute, electricity providers are required to generate or purchase renewable energy certificates from suppliers through the New England Power Pool generation information system (NEPOOL-GIS). A renewable energy certificate represents 1 megawatt-hour of electricity produced

from eligible renewable energy sources and may be sold separately from the associated electricity.

If the electricity providers are not able to meet the RPS requirements by purchasing or acquiring renewable energy certificates, they must pay alternative compliance payments (ACPs). The 2011 alternative compliance payment prices by class are:

Inflation Adjusted Alternative Compliance Payment per Megawatt-hour				
Class	**2008**	**2009**	**2010**	**2011**
Class I	$58.58	$60.92	$60.93	$62.13
Class II	$153.84	$159.98	$160.01	$163.16
Class III	$28.72	$29.87	$29.87	$30.46
Class IV	$28.72	$29.87	$29.87	$30.46

Proceeds from the ACPs are then used to fund qualified renewable energy initiatives and projects.

On an annual basis, the New Hampshire Public Utilities Commission will review electricity providers' compliance with the previous year's RPS requirements. Electricity providers include New Hampshire 's competitive electricity suppliers and electric distribution utilities (Public Service Company of New Hampshire, Granite State Electric Company, Unitil Energy Systems, Inc. and the New Hampshire Electric Cooperative). In accordance with the Commission administration rules, Chapter Puc 2500 which implements the New Hampshire 's RPS Program, electricity providers file annual compliance reports by July 1 st of each year.

- The FORM E-2500 Annual RPS Compliance Filing for the 2009 compliance year is due on July 1, 2010. Click here for the FORM E-2500
- Summary of the ACPs paid into the renewable energy fund for the 2008 compliance year
- Information on how to apply for Renewable Energy Source Eligibility
- Status of completed or pending Renewable Energy Facility applications. (Excel)
- Electric Renewable Portfolio Standard - Annual Compliance Payments for 2009

If you have any questions about the RPS program, please check our Frequently Asked Questions for answers or contact Maureen Reno at (603)271-2431 or maureen.reno@puc.nh.gov

The information on this website is a summary of New Hampshire 's RPS program. For more details see the Puc 2500 Rules.

- Review RPS Law

EXHIBIT 9

Work Session #1: RPS Class Requirements
Minutes
March 15, 2010, 9:00 AM

Call-in Phone Number: 1-866-951-1151, **Conference Room number:** 5518132

I. **Adequacy of sources to meet class requirements**

A. Baseline data sources—what are they (ISO-NE, NEPOOL GIS, utilities, PUC, etc.)?

1. Should we measure supply in terms of energy (kWh) or capacity (kW)?
   - Current requirements are based on a percentage of load measured in kWh, so we should start with generation sources and assume a given level of output per source.
   - Would capacity be related to peak load? Suggestion made that the regulations be adjusted to require a capacity-test (weighted value for generation that has low capacity values).

2. NH sources vs. New England & New York resources
   - NYSERDA completed an RPS review study in 2009.
   - CT Clean Energy Fund Board is studying the CT RPS program (with assistance from consulting firm Sustainable Energy Advantage and NREL), and will release results in April.

3. What assumptions should be used to estimate current supply and demand?
   - Suggestion made that the Commission use the NEPOOL – GIS database to determine the eligible facilities and publicly provide a redacted version (mask generators names).
   - ISO-NE interconnection queue is very long, only about 30% of projects in queue historically get built. Or may be best to use a range. Others agreed that due to siting and financing issues, this assumption is reasonable.
   - When relying on the ISO-NE Interconnection queue, add a 1 year lag to the estimated operation date.
   - Commission should consider using a range of technology-specific capacity factors.
   - Suggestion to use a modeling straw proposal.

B. Class I-IV: Where are the surpluses and shortfalls?

1. Factors contributing to surpluses and shortfalls
2. Should surpluses/shortfalls be addressed? If so, how?
   - There is an oversupply of Class III RECs due to the unforeseen supply of RECs from New York-based LFG facilities. In-state biomass facilities cannot compete in current REC market because the market price is so far below the breakeven price of $85 per MWh. Biomass facilities rely on the REC revenues to recover operation costs (transportation and woodchips).
   - Suggestion made that NH change the Class III in-service date from 2006 to 1998: this would effectively disqualify the newer New York State LFG facilities.

- The Class III market depends on the CT Class I market, such that, when the CT market rebounds, there will be a shortage of NH Class III RECs. As a result, it is uncertain how long the current surplus in Class III RECs will exist.
- There is a shortage of Class IV RECs due to market barriers, such as the 5 MW size maximum and the fish passage requirement (costly to install and reduces output). The Nature Conservancy went on record that it would not support any changes to the current fish passage requirements. Heidi Kroll for Granite State Hydro Association expressed concern on how the PUC may rule in the Holyoke Case (DE 10-151).
- Suggestion made to reduce the Class IV REC requirement.
- There is currently a surplus in Class I RECs. There will be an excess supply of Class II RECs due to the unforeseen plethora of out-of-state sources that are certified. As a result, the price of Class I and Class II RECs has dropped precipitously.

Other Questions:

a) Given that NH represents approximately 9% of the ISO-NE load, how much would an increase in Class requirements affect the market REC price (of each Class)? How would such an increase impact retail electricity rates?
   - NHEC stated that there is a one-to-one impact of REC price increase/decrease on retail rates. Suggestion made for the Commission to use modeling to confirm such an impact.

b) Do you find the REC price of [insert Class] to be adequate toward viable financing of a renewable energy project located in NH?
   - No, the price of Class II RECs is so low that sources must rely on both REC and rebates.

c) What is the overall state of the current REC market [as a tool to increase renewable energy resources in NH]?
   - Everyone agreed that NH ratepayers are supporting too many out-of-state sources. Both RECs and rebates are drivers for investments in Class II sources. There is significant concern that if current REC prices fall any lower than existing levels, than many sources, particularly biomass, will not remain in operation. The current market values existing sources more than new sources.

II. Class requirements in light of current and expected market conditions

A. Factors influencing the REC market and retail electricity market

B. Forecasting and modeling
   1. Pros and Cons
   2. Available forecasting/modeling tools
   3. What assumptions do these tools employ?

- Multiple recommendations to use consulting firm Sustainable Energy Advantage (SEA), which offers a New England REC market forecasting model (REMO). REMO has done an excellent job of forecasting the impact of REC imports from NY and Canada. An SEA analyst stated that the REMO model has been pretty accurate in projecting REC prices when reviewing past predictions and price trends.

Other Questions:

d) If you could change the class requirements, would you? How?

- Add a thermal component with a different eligible operation date to the RPS requirements. Another suggestion was made that landfill gas should have its own class. A counterpoint was made that more classes lead to less flexibility. DES pointed out that very few landfills in NH could become eligible for any class of RECs, given the way they were originally constructed.

- In addition to a price cap (which is currently the alternative compliance payment; the ACP), NH could consider adding a price support mechanism similar to the Massachusetts SREC (solar REC) suggested price minimum that is set equal to project cost. Setting an outright price floor is another option. Supporting in-state sources through the use of multipliers is another option. Many expressed the need to create and maintain certainty in the market, particularly as the biomass facilities rely greatly on REC revenues to operate.

- There was significant discussion about the need for the Commission or the legislature to reduce the burden of reading the meters (or verifying the production) of small net-metered sources. Tie monitoring to system performance and let owner report data. Utility suggestion that the RECs should go to the host utility. Discussion ensued on the topic of REC ownership. Owners of small sources want the easiest approach and are rarely interested in playing in the REC market.

e) Where do you expect the REC market to go in the near term? Medium term?

f) What role does the perception of the future REC market play in a decision to develop a renewable energy project in NH? Elsewhere in New England?

III. Increase (Extension) in requirements beyond 2025 (Class I & II, statute as a whole)

A. Should an increase be recommended? Why or why not?

B. Would an extension reduce the uncertainty of investing in renewable energy?

- There was a near unanimous consensus that the RPS requirements for all classes must be extended beyond 2025 because all sources have a 20 to 25 years life and rely on this revenue stream through the majority of that project life. It may be instructive to follow the development of the Laidlow project case and SB 118, which proposes to remedy this issue by inserting the word "thereafter."

IV. **Transition of new sources to existing sources (Class I & II)**

A. When should new sources be re-classified as existing sources, if at all?

1. Methodology for transition

- It may be premature to consider a reclassification at this time. Any re-classification date should be tied to the life (life-cycle) of a given technology.

Workshop adjourned at approximately 11:45 am.

Please email all written comments pertaining to the topics of this workshop to rpsreview@puc.nh.gov no later than 4/12/2011.

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

In re: Petition for Approval of Power Purchase Agreement) Docket No. DE 10-195
with Laidlaw Berlin BioPower, LLC)

AFFIDAVIT OF DAVID J. SHULOCK, ESQ.

1. My name is David J. Shulock, Esq., and I have personal knowledge of the following:

2. Exhibits 2, 3, and 5 to the Wood-Fired IPPs' Motion for Rehearing dated May 17, 2011 and filed contemporaneously herewith in Docket DE 10-195 are certified copies of legislative committee materials for Senate Bill 314 (2006 legislative session) maintained at the state archives. Each page is certified on the back. The orginal, general certification for these and other documents not relevant to the Wood-Fired IPPs' Motion for Rehearing is appended hereto as Attachment A.

3. Exhibits 1, 4, 6, and 7 to the Wood-Fired IPPs' Motion for Rehearing dated May 17, 2011 and filed contemporaneously herewith in Docket DE 10-195 are certified copies of legislative committee materials for House Bill 873 (2007 legislative session) maintained at the state archives. Each page is certified on the back. The original, general certification for these and other documents not relevant to the Wood-Fired IPPs' Motion for Rehearing is appended hereto as Attachment B.

4. Exhibit 8 to the Wood-Fired IPPs' Motion for Rehearing dated May 17, 2011 and filed contemporaneously herewith in Docket DE 10-195 is an accurate printout of information maintained on the New Hampshire Public Utilities Website, "An Official Web Site for New Hampshire Government" titled "Electric Renewable Portfolio Standard (RPS) and found at:
http://www.puc.nh.gov/Sustainable%20Energy/Renewable_Portfolio_Standard_Program.htm.

5. Exhibit 9 to the Wood-Fired IPP's Motion for Rehearing dated May 17, 2011 and filed contemporaneously herewith in Docket DE 10-195 is an accurate printout of the minutes of a March 15, 2011 workshop to review the New Hampshire RPS program, as maintained on the New Hampshire Public Utilities Website, "An Official Web Site for New Hampshire Government" and found at:
http://www.puc.nh.gov/Sustainable%20Energy/RPS/Work%20Session%201%20-%20Minutes%20031511.pdf.

Further affiant sayeth naught.

Dated: May 17, 2011

David J. Shulock, Esq.

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS.

Personally appeared the person signing the above affidavit, and swore that it is true to the best of his knowledge and belief.

Dated: 5/17/11

~~Justice of the Peace~~/Notary Public

SHARON A. STEWART, Notary Public
My Commission Expires April 13, 2016

ATTACHMENT A

State of New Hampshire

Department of State
Division of Archives & Records Management

I, Brian Nelson Burford, State Archivist for the State of New Hampshire, having been duly authorized by the Secretary of State, William M. Gardner, to authenticate copies of records and papers kept by the Department of State, do hereby certify that the following and hereto attached, consisting of 146 page(s), are true copies of the original document(s) on file at the Division of Archives & Records Management.

In Testimony Whereof, I hereto Set my hand and cause to be affixed the Seal of the State, at Concord, NH, this Twenty-fifth day of April, 2011

State Archivist

By authority of
William M. Gardner
NH Secretary of State

ATTACHMENT B

State of New Hampshire

Department of State
Division of Archives & Records Management

I, Brian Nelson Burford, State Archivist for the State of New Hampshire, having been duly authorized by the Secretary of State, William M. Gardner, to authenticate copies of records and papers kept by the Department of State, do hereby certify that the following and hereto attached, consisting of 102 page(s), are true copies of the original document(s) on file at the Division of Archives & Records Management.

In Testimony Whereof, I hereto Set my hand and cause to be affixed the Seal of the State, at Concord, NH, this Twenty-fifth day of April, 2011

State Archivist

By authority of
William M. Gardner
NH Secretary of State

AMENDED AND RESTATED
POWER PURCHASE AGREEMENT

This AMENDED AND RESTATED POWER PURCHASE AGREEMENT (this "Agreement") is made as of May 18, 2011 (the "Effective Date") by and between Public Service Company of New Hampshire ("PSNH"), Laidlaw Berlin Biopower, LLC ("LBB") and Berlin Station, LLC a Delaware limited liability company, as assignee of Laidlaw Berlin Biopower, LLC ("Seller"). PSNH, LBB and Seller together are the "Parties" and each individually is a "Party" to this Agreement.

WHEREAS, PSNH and LBB entered into that certain Power Purchase Agreement, dated as of June 8, 2010 ("Original PPA") with respect to a biomass-fueled electrical generation facility to be located in Berlin, New Hampshire (the "Facility"); and

WHEREAS, the Original PPA is the subject of that certain Order No. 25, 213, dated April 18, 2011 issued by the New Hampshire Public Utilities Commission (the "NHPUC Order"); and

WHEREAS, LBB desires to assign the Original PPA to Seller, and Seller and PSNH desire to amend and restate the Original PPA as provided herein in response to the terms of the PUC Order; and

WHEREAS, Seller wishes to sell to PSNH and PSNH wishes to purchase from Seller the Products (as defined below) to be produced by the Facility (as defined below) on and after the Effective Date on the terms specified herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings set forth in this Article 1. Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the ISO-NE Documents.

1.1 "Affiliate" of a Person means any other person controlling, controlled by or under common control with such first Person.

1.2 "Adjusted Base Price" is defined in Section 6.1.2(a)(ii).

1.3 "Adjustment Percentage" means a percentage equal to (i) the number of days in the first Operating Year, divided by (ii) 365.

1.4 "Ancillary Services" means any Product other than Energy, Capacity or Renewable Products that is recognized and compensated pursuant to the ISO-NE Documents from time to time.

1.5 "Average LMP Price" means the weighted average dollar value of Energy (in MWhs) delivered from the Facility to PSNH over any Operating Year (including all MWhs paid for at the Adjusted Base Price), based solely on the hourly Day-Ahead ISO-NE locational marginal price in effect at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system for each MWh delivered, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current locational marginal price for Energy.

1.6 "Base Price" means as defined in Section 6.1.2(a)(i).

1.7 "Biomass Fuel" means untreated, plant derived material including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, and any other form of biomass eligible for use to generate a REC in New Hampshire under applicable law from time to time.

1.8 "Business Day" means a day on which Federal Reserve member banks in New York, New York 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, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

1.9 "Capacity" means the MWs of capacity that (i) has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered forward capacity auction, reconfiguration capacity auction or any successor or other capacity supply auction, marketplace, or agreement and, (ii) as such, is receiving compensation pursuant to this capacity supply obligation by ISO-NE via the ISO-NE settlement process governed by the ISO-NE Documents.

1.10 "Change in Law" means that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date.

1.11 "Claim" has the meaning set forth in Section 13.3.

1.12 "Code" means Internal Revenue Code of 1954, as amended from time to time.

1.13 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties.

1.14 "Cumulative Factor" means as defined in Section 6.1.4.

1.15 "Cumulative Reduction" means as defined in Section 6.1.4.

1.16 "Delivery Point" means the Interconnection Point, as defined in the Interconnection Agreement.

1.17 "Effective Date" has the meaning set forth in the preamble.

1.18 "Energy" means electric energy, as such term is defined in the ISO-NE Documents, generated by the Facility which is delivered to PSNH at the Delivery Point..

1.19 "Environmental Attributes" means any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility during the Term including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any GIS Certificates issued in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include Tax/Grant Benefits.

1.20 "EPT" means Eastern Prevailing Time.

1.21 "Facility" means Seller's plant for generating electricity as described in Appendix A.

1.22 "FERC" means the Federal Energy Regulatory Commission.

1.23 "Force Majeure" has the meaning set forth in Section 14.1.

1.24 "GIS" means the New England Power Pool General Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that identifies generation attributes of MWhs of energy accounted for in such system, and any successor to such system.

1.25 "GIS Certificate" means an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.

1.26 "GIS Forward Certificate Transfer System" means the mechanism specified in the operating rules of the GIS system to effect transfers of GIS Certificates in advance of their creation.

1.27 "Good Industry Practices" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing electricity from the Facility. Good Industry Practices shall also include

any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been reasonably expected to accomplish the desired result at a reasonable cost. Such practices, methods and acts must comply fully with applicable laws and regulations, good business practices, economy, reliability, safety, environmental protection, and expedition, having due regard for current editions of the National Electrical Safety Code and other applicable electrical safety and maintenance codes and standards, and manufacturer's warranties and recommendations. Good Industry Practices are not intended to be the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in the electrical generation industry in the United States.

1.28 "In-Service Date" means the date on which Seller declares the Facility as in service for purposes of qualification for the Code and the Facility is capable of regular commercial operation with a predictable daily dispatch. Seller shall provide PSNH with notice of the actual In-Service Date within fifteen (15) days of such date.

1.29 "Interconnecting Utility" means Public Service Company of New Hampshire (or its successor in interest) in its capacity as a party to the Interconnection Agreement.

1.30 "Interconnection Agreement" means the Interconnection Agreement by and between Seller and the Interconnecting Utility and/or the ISO-NE as the same may be amended from time to time.

1.31 "Interest Rate" means, 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.

1.32 "Investment Grade Rating" means 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.

1.33 "ISO New England Inc." or "ISO-NE" means ISO New England Inc., its successor, or any other independent system operator or regional transmission organization for New England.

1.34 "ISO-NE Documents" means all tariffs, rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such tariffs, rules and procedures may be amended from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and

business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

1.35 "ISO-NE Energy Price" means the hourly Day-Ahead ISO-NE locational marginal price at the pricing location designated for the Facility within the ISO-NE settlement and billing systems 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.

1.36 "ISO-NE Tariff" means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time, or any successor tariff accepted by FERC.

1.37 "kW" means a kilowatt.

1.38 "kWh" means a kilowatt hour.

1.39 "LMP" means Locational Marginal Price.

1.40 "MW" means a megawatt.

1.41 "MWh" means a megawatt hour.

1.42 "Market Rule 1" means Section III of the ISO-NE Tariff, or any successor agreement accepted or approved by FERC.

1.43 "NEPOOL" means the New England Power Pool, the power pool created by and operated pursuant to the provisions of the RNA, or any successor or replacement organization(s).

1.44 "NHPUC" means the New Hampshire Public Utilities Commission or its successor.

1.45 "NHPUC Order" means Order No. 25, 213, dated April 18, 2011 issued by the NHPUC.

1.46 "New England Control Area" means as defined in the ISO Tariff.

1.47 "New England Markets" means as defined in Section I of the ISO Tariff.

1.48 "NH Class I Renewable Energy Credits" or "NH Class I RECs" means REC produced or, in the event of a Change of Law that would have been produced, by the Facility pursuant to its qualification as a renewable energy source as defined in the NH Class I Renewable Statutes at NH RSA § 362-F, as in effect on the Effective Date, and regardless of any subsequent Change in Law.

1.49 "Operating Year" means 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 Operating Year shall also include the days in the prior month on and after the In-Service Date.

1.50 "Participants Agreement" means the "Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants" dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by FERC.

1.51 "Person" means a natural person, a corporation, partnership, limited liability company, trust or any other organization or entity however organized.

1.52 "Pool Transmission Facility" or "PTF" means as defined in Section II of the ISO Tariff.

1.53 "Products" means the following items to be produced by the Facility: (i) any electrical product or service that is recognized and compensated pursuant to the ISO-NE Tariff from time to time, including but not limited to Energy, Capacity, Ancillary Services, and (ii) any Renewable Products. Products do not include any Tax/Grant Benefits.

1.54 "Project Site" has the meaning set forth in Appendix A.

1.55 "Purchase Option Agreement" means the agreement described in Appendix B hereto.

1.56 "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 Ten Billion Dollars ($10,000,000,000).

1.57 "RNA" means the New England Power Pool Second Restated NEPOOL Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, or any successor agreement.

1.58 "Renewable Energy Certificates" and "RECs" means any certificate, either paper, electronic, or any other form (including a NEPOOL GIS Certificate) that can be used to transfer rights to Environmental Attributes produced by the Facility under any Renewable Portfolio Standard.

1.59 "Renewable Portfolio Standard" means New Hampshire RSA Chapter 362-F, and any other statute, law, regulation or order promulgated by any legislative and/or regulatory authority pertaining to similar renewable energy source requirements.

1.60 "Renewable Products" means RECs and any other Environmental Attributes.

1.61 "Renewable Products Payment" means the alternative compliance payment schedule set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables, as

adjusted from time to time, *provided* that if there is a Change in Law with respect to NH RSA § 362-F and/or the New Hampshire statute is pre-empted by later federal law, Parties will use good faith efforts to revise the Renewable Products Payment to conform to the value of any replacement payment available following such Change in Law, consistent with the provisions of Section 23 of this Agreement; and *provided further*, that for the Term, the Renewable Products Payment shall not be less than the alternative compliance payment schedule (including future adjustments) set forth under NH RSA § 362-F:10 for RECs produced by NH Class I Renewables as in effect on the date hereof, and as construed by the NHPUC Order for years after 2025.

1.62 "Scheduled Operation Date" means the date set forth in Section 5.2.

1.63 "Schiller Station" means as defined in Section 6.1.2(a)(ii).

1.64 "Seller Required Approvals" means approvals from (i) the NHPUC to the extent applicable to Seller's ability to operate within New Hampshire; (ii) approval of the New Hampshire Site Evaluation Committee, together with related New Hampshire agency permits and approvals.

1.65 "Site" means the real estate on which the Facility is located.

1.66 "Site Owner" means any entity holding fee interest title in or to any portion of the Site and improvements thereon.

1.67 "Tax" or "Taxes" means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.

1.68 "Tax/Grant Benefits" means any production tax credits, investment tax credits, grants in lieu of tax credits, fuel subsidies or other non-tax cash grants or subsidies, credits or benefits that may be available with respect to the Facility pursuant to the Code or other federal or state law, including but not limited to production tax credits pursuant to Section 45 of the Code, and investment tax credits or grants available under Section 48 of the Code; provided, however, that any marketable, recurring attribute resulting from Facility production that is not listed above shall not be deemed a Tax/Grant Benefit. For the avoidance of confusion, any marketable Environmental Attribute, known today or created in the future, resulting from production of the Facility (as opposed to any tax benefit or a one-time credit or grant) is not and shall not be considered to be a Tax/Grant Benefit but instead is a Product.

1.69 "Term" means the period set forth in Section 2.1.

1.70 "Wood Price Adjustment" and "WPA" are defined in Section 6.1.2(a)(ii).

ARTICLE 2. TERM OF AGREEMENT

2.1 **Term.** This Agreement shall be binding as of the Effective Date and remain in effect thereafter through twenty (20) Operating Years from the In-Service Date ("Term").

2.2 **In-Service Date.** Seller shall provide to PSNH, subject to PSNH approval, a plan for testing and startup of the Facility at least thirty (30) days prior to the 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 Site during start-up and testing (subject to all safety procedures in effect at the Site), and/or to receive documentary evidence of the Facility's operation.

2.3 Following the end of the Term or otherwise upon termination of this Agreement, the Parties hereto shall have no further obligations hereunder, except as otherwise expressly provided herein or to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before the end of the Term and except as provided below in Section 2.4 and in Article 7, Right of First Refusal and Purchase Option.

2.4 If ownership and/or operating control of the Facility is transferred to a third party, then Seller shall include or cause to be included as part of the transfer and sale agreement with the third party the obligation that the new owner and/or the new operator shall assume all of the rights and obligations of Seller set forth in this Agreement.

ARTICLE 3. FACILITY

3.1 **Description.** The Facility is as described in Exhibit A, Description of Facility.

3.2 **Primary Energy Source.** Seller shall ensure that the Facility shall use Biomass Fuel as its primary energy source.

3.3 **Qualifying Facility.** Facility shall acquire its status as a "qualifying facility" pursuant to 18 C.F.R. Part 292 prior to the In-Service Date and maintain such status throughout the Term.

ARTICLE 4. PREREQUISITES FOR PURCHASES

4.1 PSNH's obligation to begin the purchase of Products is contingent upon the satisfaction of all the following conditions:

4.1.1 Execution of an Interconnection Agreement by the applicable parties and, if required, FERC acceptance and approval of the Interconnection Agreement under Section 205 of the Federal Power Act;

4.1.2 PSNH has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to commence commercial generation of Products, including certification to produce NH Class I RECs;

4.1.3 PSNH has received from the NHPUC a final, nonappealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement;

4.1.4 The Parties shall execute as of the In-Service Date, a Purchase Option Agreement that is acceptable to PSNH in its sole discretion in the form as set forth in Appendix B hereto, to be recorded, and PSNH shall have been issued a title insurance policy insuring its rights under the Purchase Option Agreement. The Purchase Option Agreement will provide that the Site Owner (as defined therein) may terminate the Purchase Option Agreement if this Agreement is terminated by Seller by reason of a PSNH Event of Default under Section 12.1.1 hereunder. If the Purchase Option Agreement is terminated for any other reason, PSNH may immediately terminate this Agreement without further liability.

ARTICLE 5. PURCHASE AND SALE OF POWER

5.1 Subject to the terms and conditions of this Agreement, Seller shall sell and deliver and PSNH shall purchase and accept delivery of one hundred percent (100%) of the Products produced by the Facility.

5.2 The original "Scheduled Operation Date" of the Facility is June 1, 2014. Seller agrees to give notice to PSNH at the end of each calendar quarter of any change in this date and of progress in obtaining permits and constructing the Facility.

5.3 Seller shall deliver the Energy to PSNH at the Delivery Point.

5.4 Prior to the In-Service Date and satisfaction of the Prerequisites for Purchases listed in Article 4, but subsequent to the execution of an Interconnection Agreement, Seller shall sell and PSNH shall purchase one hundred percent (100%) of the Products generated during this period, including Products generated pursuant to such Facility testing, at the prices set forth in Section 6.1.1.

5.5 Following the In-Service Date and subject to the satisfaction of the Prerequisites for Purchases listed in Article 4, throughout the Term, Seller shall deliver to PSNH one hundred percent (100%) of the Products and PSNH shall purchase the Products at the prices set forth in Section 6.1.2.

ARTICLE 6. PRICING

6.1 The price to be paid by PSNH to Seller for the Products shall be as follows:

6.1.1 For Products purchased pursuant to Section 5.4:

(a) All Products except Capacity and NH Class I RECs: PSNH shall pay to Seller the product of the ISO-NE Energy Price and the hourly quantity (MWh) of delivered Energy for its receipt of all Products (including other Renewable Products) except Capacity and NH Class I RECs;

(b) Capacity: PSNH shall pay to Seller any capacity revenues assigned to the Facility and paid to PSNH by ISO-NE or other compensation realized by PSNH for Capacity from the Facility; and

(c) NH Class I RECs: PSNH will pay to Seller the product of thirty-five dollars ($35.00) and the hourly quantity (MWh) of delivered Energy that qualifies to receive NH Class I RECs or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH.

6.1.2 For Products purchased pursuant to Section 5.5:

(a) Subject to Section 6.1.4(c) below, all Products except Capacity and NH Class I RECs will be compensated for by multiplying the Adjusted Base Price in $/MWh by the hourly quantity (MWh) of delivered Energy:

(i) The base Energy purchase price (the "Base Price") shall be equal to $69.80/MWh.

(ii) Beginning with the start of the first full calendar quarter following the In-Service Date, and thereafter on the start of each calendar quarter, the Base Price will be adjusted up or down by the "Wood Price Adjustment" or "WPA". The WPA will reflect the difference between the actual average $/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility ("Schiller Station") during the immediately preceding calendar quarter compared to $30/ton. This difference (whether positive or negative) in $/ton will be multiplied by a factor of 1.6 tons/MWh and added to the Base Price. If PSNH (i) materially changes the quality composition of its Biomass Fuel from that utilized by the Schiller Station in calendar year 2008 (by, for example, utilizing lower grade biomass, construction/demolition wastes or co-firing with fossil fuels), or (ii) effectively realizes a material discount or subsidy on its fuel purchases (whether directly or through reduced fuel prices reflecting upstream subsidies) and such discount or subsidy does not provide for similar savings to the Facility's cost of fuel, or (iii) PSNH ceases burning Biomass Fuel at Schiller Station or Schiller Station is not operational, then, for those periods during which either condition (i), (ii) or (iii) is in effect, the WPA shall be based on the difference between the actual average $/ ton cost of Biomass Fuel at the Facility and $30/ton, subject to PSNH's audit and independent review of the reasonableness of such actual costs. Thus, as of the start of each calendar quarter, such adjustment (the "Adjusted Base Price") shall be computed as follows:

Wood Price Adjustment (WPA) = 1.6 x [actual average $/ton minus $30/ton]

Adjusted Base Price ($/MWh) = Base Price + WPA

(b) Capacity: PSNH shall pay for Capacity from the Facility as follows:

(i) For the first two (2) Operating Years: $2.95 per kW-month of Capacity.

(ii) For the next three (3) Operating Years: $4.25 per kW-month of Capacity.

(iii) For each subsequent Operating Year, the Capacity Price shall be increased by $0.15 per kW-month.

(iv) Notwithstanding (i) and (ii) above, any payments for Capacity prior to June 2014 shall be in accordance with the provisions of Section 6.1.1(b).

(c) NH Class I RECs:

PSNH shall pay to Seller the following amounts for NH Class I RECs upon delivery of NH Class I RECs into the PSNH NEPOOL GIS account or upon other mutually agreeable conditions that certify that NH Class I RECs have been delivered to PSNH:

(i) For NH Class I RECs that are generated pursuant to Facility operation during the first two (2) Operating Years of the Term, PSNH shall pay the product of (i) fifty percent (50%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(ii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years three (3) through seven (7) of the Term, PSNH shall pay the product of (i) eighty percent (80%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years eight (8) through twelve (12) of the Term, PSNH shall pay the product of (i) 75% of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

(iv) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years thirteen (13) through seventeen (17) of the Term, PSNH shall pay the product of (i) seventy percent (70%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was

generated and (ii) the quantity of NH Class I RECs delivered during that period.

(v) Thereafter for the balance of the Term, PSNH shall pay the product of (i) fifty percent (50%) of the applicable Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.

6.1.3 Limitations on Purchase/Sale Obligations. In any Operating Year during the Term, PSNH shall not be obligated to purchase by reason of this Agreement in excess of 400,000 NH Class I RECs (with such figure for the first Operating Year multiplied by the Adjustment Percentage). Any NH Class I RECs produced by the Facility and not delivered to PSNH hereunder may be sold by Seller under other arrangements. In each Operating Year except the final Operating Year, for Energy deliveries in excess of 500,000 MWh (with such figure for the first Operating Year multiplied by the Adjustment Percentage), an "Excess MWh Adjustment" will be calculated. The Excess MWh Adjustment shall equal the quantity of excess Energy multiplied by the difference between (i) the Average LMP Price and (ii) the weighted average Adjusted Base Price for MWh of Energy paid for at the Adjusted Base Price during such Operating Year. The Excess MWh Adjustment, whether positive or negative, will be divided into three (3) equal portions and included on the Seller's invoice for each of the first three (3) billing months of the subsequent Operating Year. A negative Excess MWh Adjustment will be administered as a credit to PSNH, i.e. it will reduce payments due to Seller pursuant to Section 6.1.2(a). A positive Excess MWh Adjustment will be administered as an additional charge to PSNH, i.e. it will increase the payments due to Seller pursuant to Section 6.1.2(a). Notwithstanding this Section 6.1.3, during the final Operating Year of the Term, under no circumstances will PSNH purchase in excess of 500,000 MWh by reason of this Agreement.

6.1.4 Cumulative Factor.

(a) For each MWh of Energy delivered during the Term of this Agreement, a negative or positive adjustment shall be determined. When the Adjusted Base Price (in $/MWh) in effect during an hour exceeds the ISO-NE Energy Price in that hour, the hourly negative adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. When the Adjusted Base Price (in $/MWh) is less than the ISO-NE Energy Price, the hourly positive adjustment shall equal the delivered MWhs multiplied by the difference between the ISO-NE Energy Price and the Adjusted Base Price. These negative and positive adjustments will be continuously aggregated to determine a cumulative net negative adjustment or net positive adjustment for the purpose of adjusting the price of any Facility purchase option by PSNH pursuant to Article 7 hereof, if exercised. At any point in time, the cumulative value of these adjustments is defined as the "Cumulative

Factor". At any point in time, a net negative Cumulative Factor value is termed a "Cumulative Reduction". A Cumulative Reduction will serve to reduce the purchase price of the Facility as provided in the Purchase Option Agreement. A net positive Cumulative Factor will bestow no rights or obligations on either Party to this Agreement.

(b) Following each Operating Year, the value of any Excess MWh Adjustment, as defined in Section 6.1.3, whether positive or negative, will be used to adjust the Cumulative Factor determined pursuant to section 6.1.4(a), to ensure that the Cumulative Factor reflects only those Energy purchases made at this Agreement's Adjusted Base Price (effectively, after the Excess MWh Adjustment).

(c) Notwithstanding Section 6.1.2 above, 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 reimburse PSNH the value of any Excess Cumulative Reduction.

6.2 PSNH will have no claims to any Tax/Grant Benefits.

ARTICLE 7. RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

7.1 Right of First Refusal.

7.1.1 If at any time Seller desires to sell for cash, cash equivalents or any other form of consideration all or any part of the Facility (except with respect to a sale/leaseback financing or similar project financing or re-financing) pursuant to a bona fide offer (or a proposed offer) of purchase to or from a third party (the "Proposed Transferee"), Seller shall submit a written offer (the "Offer") to sell and assign all or such portion of the Facility, including any associated interests or rights in the Site and/or Facility Product delivery arrangements, described in the Offer (the "Offered Assets") to PSNH or such Affiliate of PSNH designated by PSNH (collectively, "PSNH" for the purposes of this Article 7), on terms and conditions, including price, not less favorable to PSNH

than those on which the Seller proposes to sell such Offered Assets to the Proposed Transferee. The Offer shall disclose the identity of the Proposed Transferee, describe the Offered Assets proposed to be sold and any terms and conditions, including price, of the proposed sale. The Offer shall state that PSNH may acquire the Offered Assets, for the price and upon the other terms and conditions, including deferred payment (if applicable), set forth therein during the 180-day period after the delivery of the Offer by the Seller (the "Offer Period").

7.1.2 If PSNH does not purchase all or part of the Offered Assets, the unpurchased portion of the Offered Assets may be sold by Seller at any time within twelve (12) months after the date that PSNH declined the Offer or failed to close on the Offer. Any such sale shall be to the Proposed Transferee, at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Transferee than those specified in the Offer. Any Offered Assets not sold within such twelve (12) month period shall continue to be subject to the requirements of a prior offer pursuant to this Article 7. Pursuant to the provisions of Section 2.4, the new owner of the purchased Offered Assets shall assume all rights and obligations of Seller as set forth in this Agreement, including those with respect to the Cumulative Reduction, including any prior balance thereof accumulated prior to such sale.

7.1.3 If PSNH determines during the Offer Period that it does not desire to acquire the Offered Assets, PSNH shall so notify the Seller. The Offered Assets may be sold by the Seller pursuant to Section 7.1.2 above.

7.2 Purchase Option Agreement.

7.2.1 PSNH shall have the exclusive right to purchase the Facility and all other real, personal and intangible property associated with the Facility and its operations in accordance with the Purchase Option Agreement. Seller shall cause the Site Owner and any successor(s) thereto, other entities that may hold ownership interests in the Facility, any financial lessor of the Offered Assets and any lender holding a security interest in the Facility to agree to the terms of the Purchase Option Agreement as a condition to any sale, financing, refinancing or financial sale/leaseback of the Facility. Further, upon notice to Seller, PSNH may transfer its rights under the Purchase Option Agreement to any PSNH Affiliate or other third party, inclusive of all PSNH rights under the Purchase Option Agreement. In connection with any sale made pursuant to the Purchase Option Agreement, Seller shall convey, or cause to be conveyed, the Facility and all related assets free of material financing liens.

ARTICLE 8. ADMINISTRATIVE COSTS; CHANGE IN REGULATION/LAW

8.1 **Administrative Costs.** Seller is responsible for all costs and administrative burdens of qualifying the Facility to participate in the ISO-NE markets and to participate in or qualify for any program(s) designed to document and/or provide for the sale and transfer of the Facility's Products established by any of the New England States

and/or the federal government from time to time. Seller also agrees, promptly following receipt by Seller of a written request from PSNH, to make commercially reasonable efforts to apply to other programs for the purpose of increasing the value of the Products to PSNH, in whole or in part, pursuant to the terms of this Agreement; *provided,* that such obligation does not require Seller to pursue or remain involved in litigation, assume new capital or operational obligations, amend or terminate other Product sales arrangements for NH Class I RECs, or otherwise do more than make and pursue such qualification applications; *provided further,* that if a Change in Law (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 in order to continue to produce Renewable Products or for Seller to transfer the Renewable Products 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 Renewable Products, in a form reasonably acceptable to Seller. If a Change in Law occurs where Seller realizes the monetary value of any Renewable Products obligated to be delivered to PSNH hereunder, and Seller is unable to transfer such Renewable Products to PSNH notwithstanding PSNH's request to transfer such Renewable Products 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 thirty (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 Renewable Products 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.

ARTICLE 9. CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITY: THE OPERATOR

9.1 Seller shall construct, operate and maintain the Facility using Good Industry Practices.

9.2 Seller shall construct, operate and maintain the Facility so that it obtains and retains its eligibility to produce NH Class I RECs, subject to the provisions of Section 8.1.

9.3 PSNH and Seller will be jointly responsible for administrative actions required to obtain the recognition of Capacity for the Facility within the ISO-NE market. Seller shall not be required to participate in any FCM auction process, nor will Seller be compensated for any Capacity until such Capacity is recognized by ISO-NE per Section 1.9. For the avoidance of doubt, neither Party will hold the other Party liable for any damages related to the degree to which the Facility's capability is recognized as Capacity by ISO-NE. PSNH will have no obligation to make any Capacity payments to Seller unless and until the Facility's capability satisfies the definition of Capacity in Section 1.9.

9.4 Every day (including weekends and holidays) by 9:00 a.m. EPT, Seller must provide to PSNH an estimated hourly schedule of deliverables for the following day, *except that* Seller may provide such schedule for weekends and holidays on the preceding Business Day.

9.5 Prior to October 1 of each year, Seller shall submit to PSNH for review and comment by PSNH an initial schedule of expected electricity delivery levels for the twelve (12) month period beginning with January of the following year. The schedule shall state the estimated times of operation, amounts of electricity production, number of anticipated shutdowns and reductions of output and the reasons therefore, and the dates and durations of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of the Facility. Subject to the requirements of Good Industry Practices, Seller shall not schedule routine maintenance of the Facility during the months of January, February, June, July or August, and shall consult with PSNH at least thirty (30) days prior to removing the Facility from service for routine maintenance. Seller is required at all times to comply with any outage scheduling procedures or requirements of ISO-NE or successor organization. Seller shall:

9.5.1 Consider requests by PSNH for revisions to the schedule within sixty (60) days from PSNH's receipt of the initial schedule, and subsequently advise PSNH of any changes in plan for conducting maintenance that would require an outage expected to be of greater than one (1) week's duration; and

9.5.2 Make all reasonable efforts, consistent with Good Industry Practices, to accommodate any additional changes in the initial schedule requested by PSNH; *provided, however*, that any such changes shall not be expected to reduce the total expected deliveries from the Facility.

9.6 Seller shall provide to any relevant person any information that may be required about the Facility's operations from time to time by NEPOOL or ISO-NE.

9.7 For the purpose of any bidding and administrative actions associated with NEPOOL or ISO-NE, PSNH shall be considered the Lead Participant as such term is defined by those organizations. The Parties will cooperate and work in good faith to establish mutually acceptable bidding procedures.

9.8 If the Facility is required to curtail deliveries of any Products pursuant to the Interconnection Agreement or ISO-NE notifications, Seller shall be entitled to effect such curtailment and PSNH shall have no obligation to pay for any Products 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 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.

9.9 Subject only to Good Industry Practices, during any period in which ISO-NE or NEPOOL notifies or causes Seller to be notified that the Facility should operate in a

manner to mitigate other operational or electrical problems (such as maintenance, voltage deficiency, or transmission or distribution line loading problems) on ISO-NE's or NEPOOL's electrical system, Seller shall use all reasonable efforts (including, but not limited to, delaying routine maintenance, curtailing output, or increasing output) to comply with ISO-NE or NEPOOL requests to mitigate such operational or electrical problem. PSNH shall have no obligation to pay for any Products associated with energy deliveries in excess of the level to which Seller was requested to curtail its deliveries pursuant to this Section 9.8. Seller shall also be liable to pay any and all penalties, fines, sanctions, etc. imposed by ISO-NE, NEPOOL, NERC, FERC or any similar or successor organization related to any Facility-related non-compliance with the rules and requirements or such organizations. To the extent any of these penalties, fines, or sanctions are initially assessed to PSNH pursuant to PSNH's role as the purchaser of Products from the Facility or as the Lead Participant for the Facility (as defined in the ISO-NE Documents), PSNH will reduce the Seller's next monthly invoice by the amount of such penalties, fines or sanction or shall otherwise transfer the monetary obligation to Seller.

ARTICLE 10. BILLING AND PAYMENT

10.1 PSNH or Interconnecting Utility, as applicable, shall be the designated meter reader by ISO-NE and read Seller's meters.

10.2 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 the Interconnection Agreement, calculate a monthly invoice for the applicable Products, 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 in immediately available funds 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; *provided, however*, that payments for NH Class I RECs will occur upon delivery into the PSNH NEPOOL GIS account, or upon other mutually agreeable conditions that certify that any and all NH Class I RECs have been delivered to PSNH. To the extent that PSNH is not satisfied that delivery of any Products has occurred, including but not limited to the satisfactory delivery of Renewable Products, PSNH shall reduce payments in an amount equal to the value of the non-delivered Products.

10.3 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 10.5. Except as set forth above in this Section 10.4, all payments hereunder shall be made without set-off or deduction.

10.4 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.

10.5 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 at the Interest Rate on any withheld amounts that are determined to have been properly billed. 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 delivered to the Party required to make payment thereunder; 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.

ARTICLE 11. INTERCONNECTION AND DELIVERY

11.1 This Agreement does not provide for any electric service by PSNH to Seller. If Seller requires any electric services from PSNH and is legally entitled to such service from PSNH, Seller shall receive such service in accordance with PSNH's applicable electric tariffs or, if no currently existing tariff is applicable, by special contract subject to the approval of the NHPUC.

11.2 Seller shall be responsible for any and all costs, charges and expenses associated with the Facility in connection with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees.

11.3 In addition to the provisions of Section 6.1.3 and Section 12.2.1, for any period during which PSNH does not fulfill its purchase obligations hereunder for any reason, Seller may freely sell (subject to all applicable laws and regulations) any or all of the Facility's Products produced during such period to one or more third parties until such time as PSNH resumes purchases hereunder.

ARTICLE 12. EVENTS OF DEFAULT; REMEDIES

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

12.1.1 such Party fails to pay an amount due by the due date, and such failure is not remedied within seven (7) Business Days after notice by the other Party; *provided, however*, is such Party fails to remedy payment and such failure is caused not (even in part) by the unavailability of funds but is caused solely by a technical or administrative error, then such Party shall have an additional three (3) Business Days to pay the amount due after notice of failure to remedy by the other Party.

12.1.2 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;

12.1.3 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;

12.1.4 such Party becomes or is made subject to a reorganization or liquidation proceeding administered pursuant to the U.S. Bankruptcy Code, whether pursuant to a voluntary or involuntary petition; or

12.1.5 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.

12.2 Rights of Non-Defaulting Party

12.2.1 If an Event of Default as set forth in this Article 12 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.

12.2.2 Upon an Event of Default, the Non-Defaulting Party, in addition to the rights described in specific sections of this Agreement, and except to the extent specifically limited by this Agreement, may exercise, at its election, any rights or remedies it may have at law or in equity, including but not limited to monetary compensation for damages, injunctive relief and specific performance.

12.3 **Other Termination Rights**

12.3.1 **Seller's Right to Terminate.** This Agreement may be terminated by Seller at any time prior to the In-Service Date in the event that Seller decides to 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 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 Seller's sole discretion; *provided, however,* that in such event, Seller shall notify PSNH that Seller is irrevocably terminating Facility development and/or construction, whereupon this Agreement shall terminate without further obligation of either Party except with respect to any PSNH purchase option or right set forth in Article 7; *provided further, however,* that if Seller or an Affiliate of or successor to Seller recommences development and/or construction of the Facility within a twelve-month period from the date of such notice to PSNH, then this Agreement may be reinstated at PSNH's sole option and shall be in full force and effect upon such reinstatement.

12.3.2 **PSNH's Right to Terminate.** PSNH may, at its sole option and discretion, terminate this Agreement if (i) Seller announces its plans to permanently shut down the Facility, or (ii) if the In-Service Date is not achieved by December 31, 2014, unless otherwise ordered by the NHPUC or unless the Parties otherwise agree in writing; provided that if the In-Service Date is not achieved by June 1, 2014, then Seller shall pay to PSNH damages equal to $500 per day for each day after June 1, 2014 that the In-Service date is not achieved; and *provided further*, that the June 1, 2014 and December 31, 2014 dates shall be extended day for day for any delays in obtaining any PSNH approvals under

Sections 4.1.3 or 4.1.4 above and beyond the date that is the 180th day following the date of the Original PPA (i.e., June 8, 2010), but in no event shall any such extension be beyond December 31, 2015, or (iii) Seller fails after the In-Service Date to deliver any Products to the Delivery Point that are required to be delivered hereunder 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 deliver Products to PSNH in whole or in part as a result of the occurrence of a Force Majeure event; *and further provided* that any PSNH purchase option or right set forth in Article 7 shall survive such termination.

12.4 **Termination Liability**

12.4.1 If, prior to the In-Service Date, PSNH terminates this Agreement pursuant to Section 12.3.2 or Seller terminates this Agreement pursuant to Section 12.3.1, then 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 Section 26.5.

12.4.2 Further, if Seller terminates this Agreement pursuant to Section 12.3.1 before the In-Service Date or if PSNH terminates this Agreement pursuant to Section 12.3.2 then, for a period of two (2) years following delivery of notice by Seller to PSNH of the termination of this Agreement neither Seller, its Affiliates, successors nor 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 and PSNH has not agreed in writing to reinstate this Agreement or enter into such a new agreement within ninety (90) days following the receipt by PSNH of such offer.

12.4.3 If, following the In-Service Date, either Party terminates this Agreement pursuant to Section 12.2, both Parties shall be discharged from all further obligation under the terms of this Agreement, except (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 Products 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 (ii) any PSNH purchase option set forth in Article 7, Right of First Refusal and Purchase Option, and (iii) any liability which survives termination of this Agreement.

ARTICLE 13. TITLE AND RISK OF LOSS; TAXES; INDEMNIFICATION

13.1 **Title and Risk of Loss.** Title to and risk of loss related to the Products delivered hereunder shall transfer from Seller to PSNH at the Delivery Point. Seller warrants that it will deliver to PSNH the Products 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.

13.2 **Taxes.** With the exception of any sales or gross receipts Taxes that are required by applicable law to be paid by PSNH, 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 prior to the Delivery Point. 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 at, from and after the Delivery Point, other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller. 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.

13.3 **Indemnification.** On and after the Effective Date, Seller and PSNH shall each, to the extent permitted by law, indemnify, defend and hold the other, its members, officers, employees and agents (including but not limited to affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury (including death) or property damage or otherwise asserted by a third party (a "Claim") that arises from or out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this Agreement by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified.

13.4 Either Party may be involved in an action and intend to seek indemnity under this Article 13 from the other Party. If so, the Party seeking indemnity must give prompt notice of the pendency of the action to the other Party. Whether or not notice is given, any Party from whom indemnity might be sought may, but need not, participate in the action for which the indemnity is requested with separate counsel and may assert all defenses available to it.

ARTICLE 14. FORCE MAJEURE

14.1 Each Party shall conform to Good Industry Practice in performing its obligations hereunder. Neither Party shall be considered to be in default with respect to any

obligation hereunder if prevented or delayed in a material respect from fulfilling such obligation by fire, strikes or other labor difficulties, casualties, civil or military authority, civil disturbance or riot, war, acts of God, acts of public enemy, drought, earthquake, flood, explosion, hurricane, lightning, landslide, or similar cataclysmic occurrence, or if NEPOOL or ISO-NE experiences unplanned-for emergency system conditions, including but not limited to a shortage of available electric generating capacity or an insufficiency of transmission or distribution facilities required for the delivery of Products, such that NEPOOL or ISO-NE either must suspend the supply of one or more of the Products or must curtail or interrupt all or a portion of the Products, or other event beyond the reasonable control of the Party affected ("Force Majeure"); *provided, however*, that the price or pricing structure of any Product or any applicable fuel or energy source shall not be considered a Force Majeure event.

14.2 If either Party is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected; *provided, that* payments due hereunder from either Party to the other when due shall not be excused by Force Majeure (unless the Party's inability to pay arises from a Force Majeure event affecting such Party's payment mechanism or the banking system as a whole); *and provided, further*, that:

(a) The non-performing Party promptly, but in no case later than five (5) Business Days after the occurrence of the Force Majeure, gives the other Party notice describing the particulars of the occurrence describing, in detail, the nature, extent and expected duration of the Force Majeure;

(b) The suspension of performance shall be of no greater scope, and of no longer duration, than is reasonably required by the Force Majeure; and

(c) The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

14.3 Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, is contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such difficulty.

ARTICLE 15. LIMITATION OF LIABILITIES

15.1 Neither Party shall be liable to the other Party in connection with this Agreement for any special, indirect, incidental, consequential, punitive or exemplary damages of any kind, including but not limited to loss of use, and lost profits (past or future), by statute, in tort or contract, under any indemnity provision, or otherwise.

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

16.1 Seller hereby represents and warrants to PSNH as follows:

16.1.1 Seller has full power and authority to execute and deliver this Agreement, and Seller shall continue to have full power and authority to perform its obligations hereunder, and to consummate the transactions contemplated hereby during the Term of this Agreement. The execution and delivery of this Agreement by Seller and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action required on its part and this Agreement has been duly and validly executed and delivered by Seller. For the Term of this Agreement, Seller agrees that this Agreement shall constitute Seller's legal, valid and binding agreement, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.1.2 Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the enabling legislation, bylaws, certificate of formation, LLC agreement, and any other applicable governing or formation documents of Seller, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to Seller.

16.1.3 Except for the Seller Required Approvals, which Approvals Seller agrees to obtain in order to satisfy the Prerequisites for Purchases set forth in Article 4, no consent or approval of, filing with, or notice to, any governmental authority by or for Seller is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

16.1.4 Seller agrees that during the Term of this Agreement, Seller shall comply with any and all filing and notice requirements, conditions or orders made part of, included with or subsequently added to Seller Required Approvals. Seller further agrees, during the Term of this Agreement, to fully comply with its organizational and governing documents and determinations of any governmental instrumentality applicable to Seller.

16.2 PSNH hereby represents and warrants to Seller as follows:

16.2.1 PSNH is a corporation organized and validly existing under the laws of the State of New Hampshire.

16.2.2 PSNH has full corporate power and authority to execute and deliver this Agreement, and PSNH shall continue to have full power and authority, to perform its obligations hereunder and to consummate the transactions contemplated hereby during the Term of this Agreement. Upon the fulfillment of all of the prerequisites for purchases set forth in Article 4, the execution and delivery of this Agreement by PSNH and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action required on its part and this Agreement has been duly and validly executed and delivered by PSNH. For the Term of this Agreement, PSNH agrees that this Agreement shall constitute PSNH's legal, valid and binding agreement of PSNH, enforceable against PSNH in accordance with its respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

16.2.3 Subject to any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure, neither the execution and delivery of this Agreement by PSNH, nor the consummation by PSNH of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the certificate of incorporation or bylaws of PSNH, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which PSNH is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii)constitute violations of any law, regulation, order, judgment or decree applicable to PSNH.

16.2.4 Except for any required FERC acceptance and approval of the Interconnection Agreement under the Federal Power Act and FERC's Rules of Practice and Procedure and except for the NHPUC final decision referenced in Section 4.1.3, no consent or approval of, filing with, or notice to, any governmental authority by or for PSNH is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.

ARTICLE 17. ASSIGNMENT

17.1 This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. Except as specified below and in Article 7, the rights and obligations of the Parties to this Agreement may not be assigned by

either Party without the prior written consent of the other Party, which consent shall not unreasonably be withheld, conditioned, delayed or denied; provided, however, that no assignment authorized pursuant to this Article 17 shall release the Assigning Party from any of its obligations under this Agreement unless a written release is executed by the non-assigning Party in the non-assigning Party's sole discretion. As a condition of its consent, any person to whom an assignment is made shall be required to demonstrate, to the reasonable satisfaction of the non-assigning Party, that it is capable of fulfilling the assigning Party's obligations hereunder.

17.2 Notwithstanding Section 17.1, PSNH shall have the right to assign, without the consent of Seller and without recourse to PSNH, all or any part of PSNH's interest and obligations hereunder to any regulated affiliated New Hampshire electricity distribution company of equivalent or better creditworthiness.

17.3 Notwithstanding Section 17.1, Seller shall have the right to assign, without the consent of PSNH, its rights and interests hereunder, including any right to receive payments under this Agreement, to any bank, insurance company, capital fund or similar financial institution or entity providing financing to Seller (including a sale/leaseback financing), *provided that* no such assignment shall relieve Seller of responsibility or liability for the due performance of this Agreement. PSNH agrees, upon receipt of a written request from Seller, to execute a commercially reasonable consent to any such collateral assignment by Seller providing for, among other things, simultaneous notices to Facility capital providers, a right (but not obligation) of such capital providers to cure any Seller default hereunder, and the directing of payments due Seller hereunder directly to such capital providers.

17.4 Any purported assignment not in compliance with this Article 17 shall be null and void.

17.5 **Assignment.** PSNH hereby consents to the assignment by LBB of all right, title and interest of LBB in and to the Original PPA to Seller. PSNH and Seller hereby amend and restate the Original PPA, the terms of which are superseded in their entirety by the terms of this Agreement.

ARTICLE 18. TRANSFER OF OWNERSHIP

18.1 Except in connection with a sale/leaseback financing in which Seller remains in control of Facility operations, during the Term hereof, Seller shall not sell or transfer ownership of the Facility without prior written approval of PSNH, which approval shall not be unreasonably withheld or delayed so long as the purchasing entity agrees to assume and be bound by the terms of this Agreement.

ARTICLE 19. AUDIT RIGHTS

19.1 PSNH and Seller shall each have the right throughout the Term and for a period of three (3) years following the end of the Term, upon reasonable prior notice, to audit copies of relevant portions of the books and records of the other Party to the limited extent necessary to verify the basis for any claim by a Party for payment from the

other Party or to determine a Party's compliance with the terms of this Agreement. The Party requesting the audit shall pay the other Party's reasonable costs allocable to such audit.

ARTICLE 20. GOVERNMENT ACTIONS

20.1 Seller and PSNH shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.

20.2 Seller shall use commercially reasonable efforts to obtain and retain any permits, licenses, approvals or other governmental authorizations required for the construction and operation of the Facility and Seller's performance pursuant to this Agreement for the Term. PSNH shall cooperate with Seller to obtain and retain such permits, licenses, approvals and authorizations to the extent reasonably requested by Seller, but only to the extent that PSNH does not incur any unreasonable costs in connection with that cooperation.

ARTICLE 21. NOTICES

21.1 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, to each Party at the following addresses:

To PSNH:
Public Service of New Hampshire
Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2931
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

With an additional notice to Buyer of an Event of Default to:

Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, New Hampshire 03101
Attention: Assistant General Counsel
Fax: (603) 634-2438
Phone: (603) 634-3355

To Seller: Berlin Station, LLC
c/o Cate Street Capital, Inc.
One Cate Street
Portsmouth, New Hampshire 03801-7108
Phone: (603) 319-4400
Fax: (603) 584-1315

21.2 The designation of such persons and/or address may be changed at any time by either Party upon notice given pursuant to the requirements of this Section.

ARTICLE 22. GOVERNING LAW; VENUE

22.1 **Governing Law.** Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, (i) the laws of the State of New Hampshire other than any conflicts of law provision, the effect of which would be to apply the substantive law of a state other than the State of New Hampshire to the governance and construction of this Agreement; (ii) Part II of the Federal Power Act, 16 U.S.C. §§824d *et seq.*; (iii) Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§ 35 *et seq.*; and (iv) present and future laws and present and future regulations or orders properly issued by local, state, or federal bodies having jurisdiction over the matters set forth herein.

22.2 **Venue.** Subject to Article 25, Dispute Resolution, any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction located in Manchester in the State of New Hampshire. Each Party irrevocably waives any objection which it may have to the venue of any proceeding brought in any such court and waives any claim that such proceedings have been brought in an inconvenient forum.

ARTICLE 23. CHANGE IN LAW

23.1 **Change in Law.** If, during the Term, a Change in Law occurs or any of the ISO-NE Documents are changed, resulting in elimination of or a material adverse affect upon a material right or obligation of a Party, then unless such Change in Law is otherwise specifically addressed herein, the Parties will negotiate in good faith in an attempt to amend this Agreement to incorporate such changes as they mutually deem necessary to reflect the Change in Law or the change in any ISO-NE Documents. The intent of

the Parties is that any such amendment reflects, as closely as possible, the intent and substance of the economic bargain before the Change in Law or the change in any ISO-NE Documents. If the Parties are unable to reach agreement on such an amendment, the Parties agree to resolve the matter pursuant to the terms of Article 25 of this Agreement.

ARTICLE 24. FERC AND NHPUC REVIEW; CERTAIN COVENANTS AND WAIVERS

24.1 It is the intention of the Parties that neither Seller nor PSNH shall have the unilateral right to make a filing with FERC under any section of the Federal Power Act, or with the NHPUC, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason. The preceding sentence shall not prevent (i) either Party from participating in or initiating any proceeding at FERC concerning a change to the ISO-NE Documents that impact this Agreement or (ii) PSNH from seeking NHPUC review and/or approval of any material discretionary actions to be taken by PSNH in performing under this Agreement, such as PSNH's exercise or transfer of the Purchase Option Agreement, transfer of the Cumulative Reduction, transfer of the Right of First Refusal, or incurrence of expenditures under Article 8 hereof.

24.2 It is the intention of the Parties that any authority of FERC or the NHPUC to change this Agreement shall be strictly limited to that authority which applies when the Parties have irrevocably waived their right to seek to have FERC or the NHPUC change any term of this Agreement.

24.3 FERC Standard of Review; Certain Covenants and Waivers.

24.3.1 Absent the agreement of all Parties to a proposed change, 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 solely be the "public interest" application of the "just and reasonable" 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 128 S.Ct. 2733 (June 26, 2008) (the "*Mobile-Sierra*" doctrine).

24.3.2 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, 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.

24.3.3 Notwithstanding the foregoing Sections 24.3.1 and 24.3.2, 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 §§ 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 24.3.3 shall not apply, *provided that*, consistent with Section 24.3.1, neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in Section 24.3.1.

24.3.4 The Parties agree that in the event that any portion of this Section 24.3 is determined to be invalid, illegal or unenforceable for any reason, the remaining provisions of Section 24.3 shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law.

ARTICLE 25. DISPUTE RESOLUTION

25.1 **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 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 ten (10) 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.

25.2 Mediation. If the dispute has not been resolved by negotiation within twenty (20) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within five (5) 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. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

25.3 Arbitration. Except in cases where the dispute is subject to NHPUC and/or FERC jurisdiction, 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 set forth in Sections 25.1 and 25.2 within thirty (30) Business Days of the delivery of Initial Notice, shall be finally resolved by binding 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 of the CPR Rules; *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. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, 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 Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

25.4 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 resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

25.5 **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 26. MISCELLANEOUS

26.1 **Confidentiality.** The terms of this Agreement, and any other information exchanged by 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, or any financing related to the Facility, (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. 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 and the text thereof approved by the Parties.

26.2 **Project Financial Information.** Seller agrees to provide project financial information related to the Facility as reasonably requested from time to time by PSNH in order to meet PSNH's FASB, SEC and FERC accounting and reporting requirements.

26.3 **Severability.** The provisions of this Agreement are severable. To the extent that any provision hereof is determined to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision hereof, and this Agreement shall be interpreted as if such invalid provision were not a part hereof.

26.4 **Waiver.** No waiver by either Party of the performance of any obligation under this Agreement or with respect to any default or any other matter arising in connection with this Agreement shall be deemed a waiver with respect to any subsequent performance, default or matter.

26.5 **Survivability.** 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 billing verification rights and confidentiality obligations shall survive for two (2) years beyond the applicable terms, and indemnification provisions shall survive for the full statutory period allowable by applicable law.

26.6 **No Duty to Third Parties.** Nothing in this Agreement nor any action taken hereunder is intended to or shall be construed to create any duty, liability or standard of care to or from any person not a Party to this Agreement. However, lenders to the Seller or to the Facility may have the option to perform certain Seller obligations as defined more fully under the terms of the financing documents related to the Facility.

26.7 **Amendment.** No amendment of all or any part of this Agreement shall be valid unless it is reduced to writing and signed by both Parties and, in the case of a material amendment, approved by the NHPUC.

26.8 **Complete and Full Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter herein, and takes precedence over all prior understandings between the Parties, and binds and inures to the benefit of the Parties, their successors and assigns.

26.9 **Counterparts.** Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

IN WITNESS WHEREOF, PSNH and Seller have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: Gary A. Long

Gary A. Long

Title: President and Chief Operating Officer

BERLIN STATION, LLC

By: _____

Name: Robert Desrosiers

Title: VP of Its Manager Cate Street Capital Inc.

LAIDLAW BERLIN BIOPOWER, LLC

By: _____

Name: Robert Desrosiers

Title: Manager

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire

Petition for Approval of PPA with Laidlaw Berlin BioPower, LLC

Docket No. DE 10-195

CITY OF BERLIN'S OBJECTION TO MOTIONS FOR REHEARING FILED BY EDREST PROPERTIES AND WOOD-FIRED IPPS

NOW COMES the City of Berlin, ("the City") and objects to the Motion for Rehearing filed by Edrest Properties LLC ("Edrest") and the Motion for Rehearing filed by the Wood-Fired IPPs ("IPPs") and states in support therefore as follows:

1. RSA 541:3 provides, in relevant part:

> Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing . . . specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion **good reason for the rehearing is stated in the motion.**

RSA 541:3 (emphasis added).

2. The motion for rehearing must "set forth fully every ground upon which it is claimed that the decision or order complained of is **unlawful or unreasonable.**" RSA 541:4 (emphasis added).

3. The decision to grant a motion for rehearing is discretionary; the PUC is not obligated to grant such a motion. See RSA 541:3 (providing that the commission "**may** grant" a rehearing if deemed necessary "in its **opinion**" (emphasis added)).

4. As an initial matter, Edrest's motion fails to allege that the PUC's Order is unlawful or unreasonable and must therefore be denied outright. See RSA 541:4.

5. Edrest's motion includes references to: (a) the authority of the PUC to rule upon the Power Purchase Agreement ("PPA") after year 2025; (b) the alleged (and unsubstantiated) impact on the wood supply; and (c) the alleged (and unsubstantiated) impact upon energy prices were all addressed by the PUC in its Order. Edrest fails to assert a reasonable basis to reopen these issues, which it had a full chance to argue, and in fact did argue, before the PUC during the extensive hearings held on this PPA.

6. Edrest's allegations that "changes" to the ownership structure and wood supplier will affect the PPA, such that further PUC review is necessary, are unsubstantiated. Edrest fails to explain why changes in Laidlaw's ownership structure or fuel supplier have any affect upon the Order and this proceeding beyond what has already been exhaustively argued before the PUC during the PPA hearings. These are issues which are jurisdictional to the SEC and which the SEC is addressing; there is no need for the PUC to reopen this matter.

7. The IPPs' motion fares no better. The IPPs' arguments regarding the 2025 "termination date" of the renewable portfolio standard were argued extensively during the PUC hearings on the PPA; and the PUC appropriately decided these issues in its Order. The IPPs merely raise the exact same arguments as they made during the hearings. Any claim by the IPPs that the additional Legislative history should be viewed as "new evidence" must fail since all such Legislative history was previously available to the IPPs yet they failed to raise this argument despite many days of hearings. There is, therefore, no basis for the PUC to reopen this matter.

8. Based upon Edrest's unsupported and irrelevant claims regarding the above "changes," and the IPPs' repetitive arguments which were already extensively addressed at the

hearings, it is apparent their true purpose in requesting a rehearing is to stall approval of PSNH's Power Purchase Agreement with Laidlaw Berlin BioPower and its successors for their own benefit.

9. What Edrest and the IPPs fail to mention in their Motions for Rehearing, is that reopening this matter, and thus stalling the approval of the PPA (for no valid reason), has huge impacts upon numerous other parties and risks the following:
    a. Approximately 300 construction jobs at the peak of construction and 235 on average during the 27 month construction period;
    b. Approximately 40 full time, direct, well-paying jobs once the facility is operational;
    c. Over $2 million in annual payroll to the area;
    d. The creation of hundreds of logging and forestry jobs throughout the North Country;
    e. The injection of approximately $275 Million into Region's economy;
    f. Significant increases in property tax revenue for City of Berlin;
    g. Market Tax Credits that will result in millions of dollars in stimulus funds.
10. Edrest and the IPPs are well aware that delay will likely kill or at least curtail these substantial positive impacts. As the City has explained in previous filings, if construction does not commence soon, and at least no later than September, 2011, the Section 1603 grant funds may be lost and the existing New Market Tax Credits may be unclaimed, both of which are essential parts of the economics of this project.
11. The PUC held extensive hearings on the PPA and issued a lengthy, articulate and detailed Order. The PUC did not accept the PPA as presented, but rather conditionally approved

the PPA which required several changes. PSNH has timely resubmitted a revised PPA that conforms to the Order.

12. The PUC's detailed Order appropriately accounts for all of the issues raised by Edrest and the IPPs. The matter should not be reopened.

WHEREFORE, the City respectfully requests that the Commission:

A. Deny the Motion for Rehearing filed by Edrest Properties LLC;

B. Deny the Motion for Rehearing filed by the Wood-Fired IPPs; and

C. Grant such other and further relief as the Commission deems just and equitable.

Respectfully submitted,
THE CITY OF BERLIN

By its attorneys:

DONAHUE, TUCKER & CIANDELLA, PLLC

Date: 24 May 2011

By: /s/ Keriann Roman
Christopher L. Boldt, Esq.
Keriann Roman, Esq.
225 Water Street
Exeter, NH 03833
(603) 778-0686

CERTIFICATE OF SERVICE

Pursuant to Rules Puc 203.02(2) and Puc 203.11, I hereby certify that on this 24th day of May 2011, I served copies of this Objection to those parties listed on the Service List and to the Office of Consumer Advocate.

/s/ Keriann Roman
Keriann Roman, Esq.

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Power Purchase Agreement with
Laidlaw Berlin BioPower, LLC

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO WOOD-FIRED IPPs' MOTION FOR REHEARING

Pursuant to Rule Puc §203.07(f), Public Service Company of New Hampshire ("PSNH") hereby objects to the Wood-Fired IPPs' Motion for Rehearing dated May 17, 2011. By that Motion, the Wood-Fired IPPs request that the Commission grant rehearing of its decision in Order No. 25,213.

PSNH objects to the Motion, as it does not allege sufficient good reason for rehearing or reconsideration; therefore it should be denied. RSA 541:3.

In support of this Objection, PSNH says the following:

I. Introduction

Although the Wood-Fired IPPs' Motion for Rehearing totals 149 pages (including cover letter and exhibits), it merely rehashes issues and arguments that the Commission has already considered. When boiled down, the Motion's various arguments are grounded in three claims:

1. The Legislature enacted a Renewable Portfolio Standard law, RSA Chapter 362-F, which ramps up to the requirement that in 2025, 23.8% of the electricity used

in the state come from renewable sources, then, in 2026, that requirement completely disappears (the "2025 Issue");

2. Parties to a Commission-approved agreement are never entitled to finality, because RSA 365:28 provides the Commission with unlimited authority to alter, amend, suspend, annul, set aside, or otherwise modify any Order (the "Unlimited Authority Issue"); and
3. The Commission lacks authority and jurisdiction under RSA 362-F to levelize a projection of PSNH's REC purchase requirements.

The first two these claims were previously carefully reviewed and considered by the Commission in its Order No. 25,213, "Order Granting Conditional Approval" dated April 18, 2011, whereby it conditionally approved the Power Purchase Agreement submitted for review by PSNH, as well as in Order No. 25,192, "Order on Pending Motions" dated January 14, 2011.

The last claim is legally incorrect, as RSA 362-F:9 expressly recognizes that there may be different ways to "approach" implementation of the Renewable Portfolio Standard requirements. The Commission was granted authority to review and approve multi-year purchase agreements with renewable energy sources "if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest."

II. Discussion

a. The Law

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n,* 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State,* 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003);

Comcast Phone of New Hampshire, Order No. 24,958 (April 21, 2009); and *Public Service Co. of New Hampshire*, Order No. 25,168 (November 12, 2010, issued earlier in this docket).

b. **The Facts**

A careful review of the Motion reveals that the first two grounds enumerated above forth for reconsideration have been previously raised repeatedly by the Wood-Fired IPPs and are mere reformulations of the Wood-Fired IPPs' previous arguments. These issues have also been addressed repeatedly by the Commission in Order No. 25,192 and/or Order No. 25,213.

The Wood-Fired IPPs merely reiterate previous claims that were set forth in their Motion to Dismiss dated December 13, 2010 (and docketed on December 15, 2010).[1] PSNH duly responded to that prior Motion to Dismiss by the filing of its "Objection to the Wood-Fired IPPs' Motion to Dismiss" dated December 23, 2010. PSNH refers the Commission to that prior Objection, and seeks leave to incorporate by reference the contents thereof in this instant Objection.

Moreover, the Wood-Fired IPPs further raised and addressed the issues contained in the instant Motion for Rehearing when they filed their "Reply to PSNH's Objection to Wood-Fired IPPs' Motion to Dismiss" dated January 6, 2011.[2]

The Wood-Fired IPPs again raised both the 2025 Issue and the Unlimited Authority Issue in their "Closing Statement" dated February 14, 2011.[3]

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[1] "[T]here is no requirement for the purchase of RECs after 2025 in RSA 362-F, and the Commission cannot approve cost recovery . . . for non-existent REC purchase obligations." Wood-Fired IPPs' Motion to Dismiss, p. 2 (December 13, 2010). "[R]ead in *pari materia*, RSA 362-F, RSA 374-F:3, V(c), and RSA 365:28 prohibit the Commission from approving the PPA's change in law provisions that operate to prevent the Commission from subsequently reexamining critical elements of the PPA." *Id.*

[2] "[T]here is no such renewable portfolio requirement after 2025," and "[t]here simply can be no 'compliance' with a requirement, and no recovery for any such 'compliance' when there is no requirement to be complied with." Wood-Fired IPPs' Reply to PSNH's Objection to Wood-Fired IPPs' Motion to Dismiss, pp. 2-3 (January 6, 2011). "[A]n order approving a PPA must be subsequently reviewable under RSA 365:28 to give full effect to all statutes." *Id.* at 4.

[3] "After 2025, there is no requirement for a utility to 'project.'" Wood-Fired IPPs' Closing Statement, p. 1 (February 14, 2011). "RPS statute does not permit . . . the Commission to obligate PSNH ratepayers to make secure, never changing subsidy payments through 2025, divorced from legislation changes or Commission review under 365:28." *Id.* at 4.

The Wood-Fired IPPs raised the very same issues in a previous "Motion for Rehearing" dated February 14, 2011.[4] (PSNH filed an "Objection to Wood IPPs' Motion for Rehearing" on February 16, 2011, refers the Commission to that prior Objection, and seeks leave to incorporate by reference the contents thereof in this instant Objection.)

Thus, the issues contained in the instant Motion for Rehearing have been raised by the Wood-Fired IPPs in at least four other filings in this proceeding over the course of five months.

The Commission initially dealt with these issues in its "Order on Pending Motions," Order No. 25,192 dated January 14, 2011. In Order 25,192, the Commission denied the Wood-Fired IPPs' Motion to Dismiss. With respect to the Unlimited Authority Issue, the Commission held:

> [W]e disagree with the Wood-Fired IPPs' argument regarding the interplay of RSA 365:28 and RSA 362-F:9. If we were to claim unlimited authority to revise contractual obligations such as those contained in the PPA after we approved them, the resulting uncertainty would halt the use of PPAs for the procurement of power and RECs. Such uncertainty would be harmful to both utilities and their customers, and would ultimately be detrimental to the development of renewable energy facilities in New Hampshire.

Id. In fact, the Wood-Fired IPPs' Motion at p. 20 refers back to this very Commission holding. The instant Motion presents no new evidence, nor does it identify any matters that were overlooked or mistakenly conceived by the Commission in its decision in Order No. 25,192. In Order No. 25,213, the Commission noted, "In Order No. 25,192, we rejected the Wood-Fired IPPs' argument regarding the change in law provisions of the PPA and RSA 365:28. We find no 'good reason,' *see* RSA 541:1, to change our prior ruling. The Wood-Fired IPPs merely reassert their prior arguments and request a different outcome." Order No. 25,213 at 71. Yet again, in the instant Motion the Wood-Fired IPPs have presented no "good reason" for rehearing, and they merely reassert their prior arguments and request a different outcome. The Commission need not waste its time and resources considering the Wood-Fired IPPs' fifth bite at the apple.

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[4] "[The Commission lacks the authority to grant] the approval of REC purchases and ratepayer payments for [ ] RECs beyond 2025." Wood-Fired IPPs' Motion for Rehearing, p. 2 (February 14, 2011). "[T]he Commission lacks the power [under RSA 365:28] to approve contract provisions that have the effect of preventing the Commission from revisiting its order approving a PPA ...." *Id.* at 3.

With respect to the 2025 Issue, the Commission initially held that "The existence of contractual terms that may conflict with statutory requirements or authority is not a basis for dismissal before the facts and arguments in the case are fully developed, rather it is a factor to be considered in our public interest review of the PPA, especially in light of the conditioning authority granted to the Commission under RSA 362-F:9, I." Order No. 25,192, *slip op.* at 8. The Commission follows that finding with a carefully considered five page discussion of the 2025 Issue in its Order No. 25,213. The Wood-Fired IPPs' Motion fails to provide any new evidence regarding the 2025 Issue that could not have been presented in the underlying proceeding. Nor have the Wood-Fired IPPs identified specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal - - given that the Wood-Fired IPPs presented no testimony during this proceeding, the lack of "overlooked or mistakenly conceived" facts is not surprising. To the extent that the Commission deems it necessary to consider the very same legal arguments contained in the Wood-Fired IPPs' original Motion to Dismiss, PSNH respectfully requests the Commission to consider the matters set forth in the "Objection of Public Service Company of New Hampshire to Wood-Fired IPPs' Motion to Dismiss" dated December 23, 2010, which is incorporated herein by reference.

Further and importantly, we note that in constructing its latest argument around the 2025 Issue, the Wood-Fired IPPs charge the Commission with incorrectly construing RSA 362-F:3 as affirmatively incorporating Class I resource requirements beyond 2025. While we think such a statutory construction would be persuasive if made, the Commission need not, and did not, go so far as to definitively construe the statute. Rather, the Commission simply found that given the internal structure of RSA 362-F and the Legislature's periodic review of the statute to reflect on gathered experience with the statutory program[5], "PSNH could *reasonably project* that the Class I renewable portfolio requirement for 2025 will continue in effect thereafter unless and until changed." Order

[5] As the Commission noted in its Order, the Legislature has provided for periodic Commission and Legislative reviews of the RPS program (in 2011, 2018 and 2025). *See* RSA 362-F:5. The Legislature may clarify and refine the statutory program based on real-world experience over time. In the interim the Commission must reasonably interpret the RPS program in a manner that is consistent with the purpose of the statute to "stimulate investment in low emission renewable energy technologies in ... New Hampshire ... at new facilities" and the express Legislative recognition of the "importance of stable long-term [RPS] policies." *See* RSA 362-F:5 and Order No. 25,213 at 74.

No. 25,213 at 76 (emphasis added). That projection is perfectly in line with RSA 362-F:9, which grants the Commission the authority to approve PSNH's request to enter into the 20-year PPA in order to meet the "reasonably projected renewable portfolio requirements and default service needs to the extent of such [reasonably projected] requirements," so long as the PPA is in the public interest. PSNH's rational post-2025 projection, taken together with (i) the practical needs for a long term year PPA to secure new Class I resources between now and 2025, and (ii) the Commission's imposed PPA conditions, produce a PPA that meets the public interest standard of RSA 362-F:9.

The Wood-Fired IPPs' claim that the Commission lacked authority and jurisdiction under RSA 362-F to levelize a projection of PSNH's REC purchase requirements is legally incorrect. The purpose of the state's Renewable Portfolio Standard, as set forth in RSA 362-F:1, is to stimulate investment in renewable energy generation. The Wood-Fired IPPs suggest that the RPS law defines a narrowly and precisely defined opportunity for this state's utilities to enter into PPAs that further the purpose of the RPS law. The Wood-Fired IPPs are mistaken in that regard.

RSA 362-F:9 anticipated that PPAs intended to implement the RPS law's requirements needed flexibility. Thus, that law notes that the law's requirements as implemented by PPAs may be approved by the Commission "if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest." The Commission determined that an appropriate methodology to meet the law's public interest requirement was to set a certain level of REC purchases over the life of the PPA. That determination by the Commission was deemed to be an approach that was in the public interest to meet reasonably projected RPS needs over the long-term. The RPS law does not require that such reasonably projected RPS needs be done on a day-by-day, month-by-month, year-by-year, or decade-by-decade basis. The Commission has the power to carry into effect the provisions of RSA Title XXXIV, which includes the RPS law in RSA Chapter 362-F, as part of its general supervisory authority granted by RSA 374:3.

c. Standing

PSNH reiterates its objection to the granting of intervenor status to the Wood-Fired IPPs, for the reasons set forth in its "Objection of Public Service Company of New Hampshire to Petitions to Intervene" dated September 28, 2010, which is incorporated herein by reference.

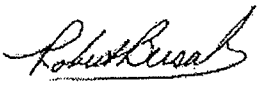
III. Conclusion

The Wood-Fired IPPs have failed to meet the requirement for rehearing set forth in RSA 541:3 that "good reason for the rehearing be stated in the motion." The Wood-Fired IPPs' Motion contains the classic reassertion of prior arguments with a request for a different outcome on one hand, and a mischaracterization of the governing law on the other hand.

For the reasons set forth herein, the Commission should sustain its original decision in Order No. 25,192, deny the Wood-Fired IPPs' Motion for Rehearing, and reverse its prior approval of intervenor status for the Wood-Fired IPPs.

Respectfully submitted this 24th day of May, 2011.

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 

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STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 10-195

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Purchased Power Agreement with Laidlaw Berlin BioPower, LLC

Order Denying Motion for Rehearing Filed by Wood IPPs, Granting Withdrawal of Document Filed by Edrest Properties, and Addressing Compliance with Conditions Set Forth in Order No. 25,213

ORDER NO. 25,239

June 23, 2011

I. PROCEDURAL BACKGROUND

In this order we address two motions for rehearing of *Public Service Company of New Hampshire*, Order No. 25,213 (April 18, 2011) and consider whether the Amended and Restated Power Purchase Agreement (Amended PPA) filed by Public Service Company of New Hampshire (PSNH) complies with the terms of Order No. 25,213. Order No. 25,213 contains a detailed procedural history of the docket that is not repeated here except as appropriate to explain our rulings.

In Order No. 25,213, we concluded that a proposed Power Purchase Agreement (PPA) between PSNH and Laidlaw Berlin BioPower, LLC (Laidlaw) for the acquisition of energy, capacity, and renewable energy certificates (RECs) was not in the public interest as filed, but approved the PPA on condition that PSNH file a revised PPA complying with the terms of the Order within 30 days. On May 18, 2011, PSNH filed an unexecuted version of the Amended PPA that PSNH asserts complies with the terms set forth in Order No. 25,213.

On May 17, 2011, Bridgewater Power Company, L.P., Pinetree Power, Inc., Pinetree Power-Tamworth, Inc., Springfield Power LLC, Whitefield Power & Light Company, and Indeck Energy - Alexandria, LLC (collectively the Wood IPPs) filed a motion for rehearing.[1] The motion for rehearing was timely filed pursuant to RSA 541:3 and N.H. Code Admin. Rules Puc 203.33. PSNH and the City of Berlin filed objections to the motion for rehearing on May 24, 2011.

Intervenor Edrest Properties, LLC (Edrest) also filed a motion for rehearing, on May 18, 2011, and on May 27, 2011 asked the Commission to withdraw the motion. On June 6, 2011, the Office of Consumer Advocate (OCA) filed a letter setting forth several concerns in connection with the Amended PPA. On June 6, 2011, PSNH responded to the concerns raised by the OCA. Pursuant to RSA 541:5, the commission issued a secretarial letter on May 25, 2011 suspending Order No. 25,213 pending a decision on the motion for rehearing and determination of compliance of the Amended PPA with the terms set forth in such order.

II. WOOD IPPS

A. Motion for Rehearing

The Wood IPPs request that the Commission rehear Order No. 25,213 and issue an order consistent with the arguments raised in their motion and applicable to any compliance filing made in this docket. Motion for Rehearing at 22. Among other things, Order No. 25,213 included our ruling on the Wood IPPs' motion for rehearing of Order No. 25,192 (January 14,

[1] Also on May 17, 2011, the Wood IPPs filed with the Commission a copy of the RSA 541:6 notice of appeal they filed with the New Hampshire Supreme Court. The legal issues raised in the notice of appeal are among the issues raised in the Wood IPPs' motion for rehearing. We conclude that the Wood IPPs decision to file the notice of appeal does not foreclose us from acting on their motion for rehearing.

2011), in which we denied a motion to dismiss filed by the Wood IPPs on December 15, 2010, and addressed the Wood IPPs' arguments made in their closing statement.[2]

The Wood IPPs make two major arguments, each with several subparts. First, they argue that Order No. 25,213 is unlawful, unjust and unreasonable because it incorrectly determines that the REC purchase obligation extends past 2025, authorizes PSNH to enter into a REC purchase agreement whose terms extend beyond 2025, and allows PSNH to recover from ratepayers the cost of RECs acquired after 2025. *Id.* at 2. They maintain that a plain reading of RSA 362-F:3 demonstrates that, absent further legislative action, the REC purchase obligation ends in 2025. *Id.* at 3. They contend that the Commission erred in reviewing legislative history to hold that a REC purchase obligation exists beyond 2025. Even so, they argue that legislative history demonstrates that the REC purchase obligation ends in 2025. *Id.* at 4.

The legislative history they identify in support of their contention is a provision in Senate Bill 314 filed in the 2006 legislative session. Senate Bill 314 proposed a renewable portfolio standard (RPS) for the state; it contained a table that expressly provided a yearly REC purchase obligation for years through 2013 and a "thereafter" obligation for the years following 2013. Senate Bill 314 was voted inexpedient to legislate in the House of Representatives; the following year, however, new legislation to create an RPS for the state, House Bill 873, became law, codified at RSA Ch. 362-F. The statutory language did not contain the word "thereafter". According to the Wood IPPs, the absence of language creating an RPS program of indefinite duration was purposeful and differentiates the New Hampshire RPS program from the RPS programs of other states. *Id.* at 7. The Wood IPPs further maintain that the Commission's rules

[2] The Wood IPPs' first motion for rehearing and their closing statement were both filed with the Commission on February 14, 2011.

implementing RSA 362-F, Puc Ch. 2500, sets forth REC purchase requirements only for the years 2008 through 2025. *Id.* at 9. In the Wood IPPs' view, Order No. 25,213 erred by, in effect, adding words to the statute that the drafters specifically removed.

The Wood IPPs further assert that an end of the REC purchase obligation in 2025 harmonizes with the remainder of the statute and does not result in an absurd or unjust result. *Id.* at 11. Citing *Public Service Company of New Hampshire*, Order No. 24,945 (Feb. 27, 2009), the Wood IPPs argue that the reason for Commission approval of multi-year agreements under RSA 362-F:9 is to allow the petitioning electric distribution utility to recover the prudently incurred costs of such agreements. The Wood IPPs maintain that application of the plain meaning of RSA 362-F:3 and 362-F:9, I would prohibit the Commission only from pre-approving for rate recovery multi-year agreements that exceed the extent of the compliance requirements set forth in RSA 362-F:3, meaning that distribution utilities would have to demonstrate the prudence of such speculative purchases after the fact, such as in PSNH's energy service rate proceedings. According to the Wood IPPs, a distribution utility, like any other retail provider of electricity subject to the statutory REC purchase obligation, must bear the risk of recovering the costs of REC purchases that exceed the statutory RPS compliance requirements. *Id.* at 12.

In addition, the Wood IPPs contend that applying RSA 362-F:3 as written does not require the Commission to place a "temporal restriction on multi-year agreements not stated [in RSA 362-F:9, I]," *see* Order No. 25,213 at 74-75. They emphasize that the restriction is explicitly stated in RSA 362-F:9, I, *i.e.*, that the Commission may only authorize entry into "multi-year purchase agreements ... for certificates ... to meet reasonably projected renewable portfolio requirements and default service needs *to the extent of such requirements.*" *Id.* at 13.

Further, they disagree with the reasoning of Order No. 25,213 that Commission review and reporting regarding RSA 362-F in 2025 would be a meaningless exercise if their interpretation is correct. *Id.* at 13-14.

The Wood IPPs' second major argument is that Order No. 25,213 unlawfully asserts jurisdictional authority under RSA 362-F to approve a PPA whose term for the purchase of RECs and recovery of the costs of those RECs from ratepayers extends beyond 2025. *Id.* at 15. They refer both to RSA 362-F:9, I and RSA 374-F:3,V(c),[3] which they assert only permits recovery from ratepayers of costs incurred in complying with RPS requirements.

In addition, the Wood IPPs contend that the Commission lacks authority and jurisdiction to levelize a projection of PSNH's REC purchase requirements. *Id.* at 16-17. They maintain that the Commission's efforts to project PSNH's RPS requirements for the 20-year term of the PPA and then levelize this projection over the entire term was unlawful. They argue that Order No. 25,213 unlawfully allows PSNH to purchase the levelized annual REC amount rather than the amount of RECs required to meet the statutory compliance requirement applicable to each year of the PPA term, and then binds ratepayers to fund the purchase of RECs not required for compliance with PSNH's RPS requirements.

The Wood IPPs further contend that the Commission lacks authority and jurisdiction to approve change in law provisions in an agreement under RSA 362-F that fail to give effect to the Commission's authority under RSA 365:28 (Commission authority to alter orders after notice and hearing). *Id.* at 17. The change in law provisions referred to here are sections 1.44, 1.57,

[3] The relevant part of RSA 374-F:3,V(c) is the provision that "[a]ny prudently incurred costs arising from compliance with the renewable portfolio standards of RSA 362-F for default service or purchased power agreements shall be recovered through the default service charge."

8.1, and 23.1 of the PPA. The Wood IPPs argue that Order No. 25,213 effectively asserts its right to waive or ignore, or not apply the plain meaning of RSA 365:28 and that RSA 362-F, 374-F:3, V(c), and 365:28, read *in pari materia,* prohibit the Commission from creating non-modifiable REC purchase requirements and insulating the contracting parties from future legislative action, at ratepayers' expense. *Id.* at 17-18. They further maintain that these three statutes are readily harmonized, *Id.* at 19, and state that unlike the RPS programs in other states, New Hampshire did not provide for vesting of statutorily-created REC purchase obligations underlying multi-year REC purchases and recovery of related costs. *Id.* at 20.

Finally, they contend that certain provisions of the PPA, *i.e.*, sections 1.8, 1.44, and 1.57, unlawfully require the present approval of the purchase of, and cost recovery for, RECs produced by the Laidlaw facility notwithstanding any future legislative or regulatory changes that would revise, replace or displace the New Hampshire RPS program and New Hampshire RECs, at prices that may not be permissible under the New Hampshire RPS, if the statute is amended, repealed, or displaced. *Id.* at 21-22. They reiterate that nothing in RSA 362-F:9, I or RSA 374-F:3, V(c) allows the Commission to authorize the purchase or cost recovery for anything but the costs of compliance with the New Hampshire RPS statute. *Id.* at 22.

B. Objections to Motion for Rehearing

PSNH objects to the Wood IPPs' motion for rehearing on grounds that the motion merely revisits issues and arguments that the Commission has already considered. PSNH contends that the Commission reviewed and considered the first two of the Wood IPPs' claims, *i.e.*, the "2025" issue and the RSA 365:28 issue, in Order No. 25,213 and Order No. 25,192. PSNH Objection at

1-2. PSNH asserts that the Wood IPPs raised these claims in at least four other filings in this proceeding. *Id.* at 3-4.

As to the Wood IPPs' claim that the Commission lacks authority and jurisdiction under RSA 362-F to levelize a projection of PSNH's REC purchase requirements, PSNH argues that the claim is legally incorrect because RSA 362-F:9 expressly recognizes that there may be different ways to "approach" implementation of the RPS requirements and the Commission is granted authority to review and approve multi-year purchase agreements with renewable energy sources "if it finds such agreements or such an approach, as may be conditioned by the commission, to be in the public interest." *Id.* at 2, 6. In particular, PSNH states that in Order No. 25,213 the Commission determined that an appropriate methodology to meet the law's public interest requirement was to set a certain level of REC purchases over the life of the PPA, an approach deemed by the Commission to be in the public interest to meet reasonably projected RPS needs over the long-term. In PSNH's view, the RPS law does not require that such reasonably projected RPS needs be done on a day-by-day, month-by-month, year-by-year, or decade-by-decade basis; rather, the Commission has the power to carry into effect the provisions of RSA Title XXXIV, including RSA 362-F, as part of its general supervisory authority granted by RSA 374:3. Finally, PSNH reiterates its objection to the granting of intervenor status to the Wood IPPs and requests that we reverse our approval. *Id.* at 7.

Like PSNH, the City of Berlin maintains that the "2025" issue was argued extensively during the hearings on the PPA and the Commission appropriately decided the issue in Order No. 25,213. City of Berlin Objection at paragraph 7. Berlin further contends that the additional legislative history relied upon by the Wood IPPs in their motion for rehearing is not new

evidence given that all such legislative history was available to them and they failed to raise this issue. Berlin maintains that reopening this matter and thus stalling the approval of the PPA for no valid reason, would have serious economic risks. Paragraph 8. Finally, Berlin states that PSNH has timely filed a revised PPA that conforms to Order No. 25,213. Paragraph 11.

C. Commission Analysis

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *see O'Loughlin v. N.H. Personnel Comm'n* 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the deciding tribunal. *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003), *Comcast Phone of New Hampshire*, Order No. 24,958 (April 21, 2009) at 6-7 and *Public Service Company of New Hampshire*, Order No. 25,168 (November 12, 2010) at 10.

First, we reject PSNH's assertion that the Wood IPPs should not have been granted intervention. PSNH has demonstrated no new evidence or matters that were overlooked or mistakenly conceived when we granted the Wood IPPs intervention status.

The major arguments advanced by the Wood IPPs in their first motion for rehearing were included in their closing statement. The arguments made in the Wood IPPs' motion for rehearing are largely the same as those they made previously, and were ruled on in Order No. 25,191 at 4-8 and Order No. 25,213 at 70-77, with the exception of the levelization arguments,

which are discussed below. The Wood IPPs have not identified any new evidence regarding the "2025" or RSA 365:28 issues that were not and could not have been presented in the underlying proceeding. Neither have they identified matters that were "overlooked or mistakenly conceived" as would warrant a new hearing or reversal of prior rulings.

The only new argument advanced by the Wood IPPs relates to their claim that the Commission lacks authority and jurisdiction to levelize a projection of PSNH's REC purchase requirements. The argument is new because it relates to a condition to approval of the PPA established in Order No. 25,213, stating that:

> there need not be an exact match in each year of the PPA between the Class I RECs expected to be produced by the Laidlaw facility and PSNH's unsatisfied renewable portfolio requirement. Doing so would not be realistic, as the REC requirement ramps up over time but a new facility brings on a large influx of renewable generation at the moment it becomes operational. REC agreements that limit purchases to the REC requirement for each particular year would make financing of these projects difficult and could, in effect, deter desirable renewable energy generation projects from being approved and built, a result that we find contrary to legislative intent. Instead, we view the REC requirement in the context of the 20-year period covered by the PPA . . . .
>
> PSNH's reasonably projected Class I REC requirement is 7,960,000, or approximately 8 million certificates, over the 20-year term of the PPA. Given the increasing REC obligation over time, in the early years of the agreement the RECs generated by the project will be in excess of the statutory requirement while in the later years the RECs generated by the project will be less than the statutory requirement. We find that it is in the public interest pursuant to RSA 362-F:9 to approve a multi-year purchase agreement that levelizes the REC purchase requirement over time. *Id.* at 84, 95

Consistent with this conclusion, the Commission approved a condition to approval of the PPA that imposes a ceiling on PSNH's REC purchase obligation of 400,000 RECs per year on a levelized basis. *Id.* at 95. At the same time, we stated that RECs produced by Laidlaw above this ceiling could be purchased by any entity requiring RECs, at market prices or pursuant to a separate contract that Laidlaw might negotiate with a buyer. *Id.*

After review of the Wood IPP arguments, we conclude that we have authority under RSA 362-F to levelize a projection of PSNH's REC purchase requirements as part of the public interest determination under RSA 362-F:9 for the reasons set forth in Order No. 25,213 and in PSNH's objection to the Wood IPPs' motion for rehearing. We find no basis to conclude that the "reasonably projected renewable portfolio requirements" referred to in RSA 362-F:9, I must necessarily be determined on an annual basis as a matter of law. That is not an express requirement of the statute and as the agency responsible for determining whether to approve a multi-year purchase agreement under RSA 362-F:9, the Commission has latitude to decide whether "projected renewable portfolio requirements" are or are not "reasonable." In this proceeding, we have applied our best judgment in doing so. Ultimately, the judgments to be made affect the rates customers will be required to pay and the appropriate extent to which investment in renewable energy generation is to be stimulated. These are the kind of choices the Commission has traditionally been called on to make. *See Appeal of Verizon New England, Inc.*, 153 N.H. 50, 56 (2005).

We note further that RSA 362-F contemplates situations where "excess" RECs are acquired. For example, under RSA 362-F:7, I, unused REC certificates[4] issued for production during the prior two years may be "banked" and later used to meet up to 30 percent of a provider's requirements for the current year of compliance.[5] This being the case, it is clear that the Legislature envisioned the possibility of the accumulation of excess RECs to a limited extent.

[4] An unused certificate is one that is not used for compliance with RSA 362-F in the year in which it is produced.
[5] Alternatively, the excess RECs can be sold to other providers for their compliance purposes, with any resulting revenues being included in the calculation of energy service rates.

III. EDREST PROPERTIES

Edrest asks that it be permitted to terminate its previously filed motion for rehearing. The gist of Edrest's motion for rehearing is that significant changes to the plant's ownership structure and fuel supplier occurred since the issuance of Order No. 25,213 and that these changes can significantly affect whether the PPA is in the public interest. Both PSNH and the City of Berlin objected to Edrest's motion for rehearing.

Edrest gives no reason for the requested "termination" which we construe to be the same as withdrawal. We find no reason to reject the request and will treat the motion as withdrawn. Though Edrest's motion is withdrawn, however, we note that one of Edrest's issues, the change in ownership structure of the biomass plant, is pending before the Site Evaluation Committee (SEC).

IV. DETERMINATION OF COMPLIANCE

A. OCA Letter

The OCA states that section 6.1.3 of the Amended PPA is inconsistent with Order No. 25,213 in that it obligates PSNH's ratepayers to pay for 100% of the output of the plant contrary to the order, which limits energy purchases to 500,000 MWh per year. In addition, the OCA states that this provision improperly requires ratepayers to carry the costs of any overpayment of energy over 500,000 MWh for a year. The OCA further states that to be consistent with the order, section 6.1.4 of the Amended PPA should make clear that "excess cumulative reduction" is a subset of "cumulative reduction" that will serve to reduce the purchase price of the Laidlaw facility as provided in the Purchase Option Agreement (POA) and the Amended PPA should be revised to add a statement that if the reduction in the purchase price does not serve to refund the

"excess cumulative reduction," then Laidlaw must reimburse PSNH the excess cumulative reduction in cash. The OCA also questions why there is no security for the "excess cumulative reduction." Finally, the OCA states that the Amended PPA does not contain a provision that the PPA be revised "to add a provision that expressly recognizes the Commission's retention of such traditional regulatory authority" as required, *see* Order No. 25,213 at 98.

B. PSNH Response

PSNH disputes the OCA's assertions. Regarding section 6.1.3 of the Amended PPA, PSNH states that its obligation to pay contract rates for energy is limited to an annual purchase obligation of 500,000 MWhs, thus constraining the potential impact as required by Order No. 25,213. PSNH further relies on the reasoning and methodology contained in its May 18, 2011 letter to address the OCA's concern.[6] As to carrying costs borne by ratepayers, PSNH questions whether the 500,000 MWh cap would ever be exceeded and even if so, the cap would only be exceeded late in an operating year resulting in a short carrying period and minimal carrying costs.

Regarding the issue of the "excess cumulative reduction" raised by the OCA, PSNH states that the Amended PPA adequately addresses the possibility that PSNH would purchase the

[6] In that letter, PSNH explained that,

> PPA pricing will apply to no more than 500,000 MWhs of energy per year. Any additional energy produced by the Facility will be priced at the "Average LMP Price," thus making PSNH's customers indifferent to such purchases. The design of this provision is intended to ensure that both the Facility owners and PSNH's customers are treated fairly and equitably under the PPA, with no possibility of "gaming" purchases or plant operations to favor one party over the other. For example, if the contract language specified that purchases by PSNH ceased entirely once the 500,000 MWh sales cap was reached, the developer would have the theoretical opportunity to adjust the timing of the Facility's In-Service Date to just after the winter or summer peak periods. That would maximize energy sales to PSNH during lower cost spring and fall periods to the detriment of PSNH's customers and allow the developer to benefit by selling any generation in excess of the 500,000 MWh cap to the market at the end of an "Operating Year" which would occur during a high cost winter or summer period.

Laidlaw facility. PSNH refers to section 6.1.4(a) of the Amended PPA, which would be used to adjust the price of any facility purchase option by PSNH pursuant to Article 7, if the POA were exercised, and section 6.1.4(c), which states that the energy credit mechanism only applies to any "excess cumulative reduction" "at the end of any Operating Year other than the last Operating Year during the Term....".

PSNH responds to the OCA's question about the lack of security for the "excess cumulative reduction" by stating that it represents an untimely request for rehearing under RSA 541:3 and that, in any event, for every year of the contract except for the last operating year, the value of the facility's energy generated during the following year provides security for crediting any "excess cumulative reduction" to customers. Finally, with respect to the OCA's assertion regarding the need to expressly recognize the Commission's retention of its traditional regulatory authority, PSNH states that section 24.1(ii) expressly provides that the Amended PPA does not prevent PSNH from seeking NHPUC review or approval of any material discretionary actions to be taken by PSNH in performing under the agreement, such as PSNH's exercise or transfer of the POA, transfer of the cumulative reduction, transfer of the right of first refusal, or incurrence of expenditures under Article 8 hereof. Thus, according to PSNH, the Amended PPA complies with the terms of Order No. 25,213.

C. Commission Analysis

We have reviewed the Amended PPA and the written comments of PSNH and the OCA to determine whether the Amended PPA complies with the terms of Order No. 25,213. To the extent set forth below, we accept the Amended PPA as being in compliance with Order No.

25,213. The new provision in section 6.1.3 regarding energy purchases in excess of 500,000 MWhs per year, however, is an extraneous provision. In Order No. 25,213, we stated:

> [g]iven the likely variations in net output and capacity factor under actual operating conditions, and to constrain the potential impact on ratepayers, we condition approval of the PPA on an annual output purchase obligation of 500,000 MWh. Additional output *could* be purchased by any market participant, at market prices or pursuant to a separate contract that Laidlaw might negotiate with a buyer. *Id.* at 96. (emphasis added)

By contrast, the Amended PPA does not contain this limitation. Instead, section 6.1.3 inserts in this PPA, rather than in a separate contract, a pricing mechanism for energy deliveries in excess of 500,000 MWh per year, under which such excess deliveries are purchased, at the Average LMP Price as defined in new section 1.5. While we do not reject the PPA for inclusion of this provision, we do not approve any mandate that PSNH purchase more than 500,000 MWhs in any given year; neither do we pre-approve recovery of the costs of such excess purchases as part of this proceeding. If PSNH purchases more than 500,000 MWhs in any given year, it will have to demonstrate in future annual energy service reconciliation proceedings that such purchases were prudently undertaken and were reasonable in amount and price, in the same way other supplemental power purchases are reviewed by the Commission.

The OCA raises certain other issues in addition to the question of whether section 6.1.3 complies with Order No. 25,213. Regarding OCA's requested clarification that "excess cumulative reduction" be considered a subset of "cumulative reduction" that will serve to reduce the purchase price of the Laidlaw facility as provided in POA, the Amended PPA is clear enough that both excess and non-excess cumulative reduction will reduce the purchase price in the event the POA is exercised. As to the question of adding a statement to the Amended PPA providing that if the reduction in the purchase price does not serve to refund the "excess cumulative

reduction," then Laidlaw must reimburse PSNH the excess cumulative reduction in cash, such a provision would go beyond the terms we established in Order No. 25,213. There may be some risk that excess cumulative reduction amounts generated during the last contract year are not reimbursed, but that risk has been substantially reduced from the proposal as originally filed. Similarly, Order No. 25,213 did not require the Amended PPA to include security for the "excess cumulative reduction," nor did it require payment of carrying costs of any overpayment of energy over 500,000 MWh for a year. Finally, the Amended PPA does not need additional language recognizing the Commission's retention of its traditional regulatory authority. That authority remains as stated in Order No. 25,213.

Based upon the foregoing, it is hereby

ORDERED, the motion for rehearing filed by the Wood IPPs is denied; and it is

FURTHER ORDERED, that Edrest's request to terminate its previously filed motion for rehearing is granted; and it is

FURTHER ORDERED, that the Amended PPA is approved except to the extent set forth above; and it is

FURTHER ORDERED, that PSNH file with the Commission an executed copy of the Amended PPA in the event the SEC approves a change in ownership structure from that reflected in the Amended PPA.

By order of the Public Utilities Commission of New Hampshire this twenty-third day of June, 2011.

Thomas B. Getz
Chairman

Amy L. Ignatius
Commissioner

Attested by:

Kimberly Nolin Smith
Assistant Secretary

Concurring and Dissenting Opinion of Commissioner Below

I concur with the majority in all respects except with regard to its analysis and conclusion concerning the "2025" issue. Consistent with the reasoning set forth in my previous dissent on the question of whether a New Hampshire RPS compliance obligation persists beyond 2025, I would grant the Wood IPP's motion for rehearing on this issue on the basis that the majority misconstrued the law on this matter.

Clifton C. Below
Commissioner