

SECOND AMENDMENT TO AMENDED AND
RESTATED POWER PURCHASE AGREEMENT

August 18, 2022

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

This **SECOND AMENDMENT TO THE AMENDED AND RESTATED POWER PURCHASE AGREEMENT** (this "**Second Amendment**") is entered into as of August 18, 2022, by and between and PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE ("**PSNH**"), and BERLIN STATION, LLC ("**Berlin Station**"). PSNH and Berlin Station are individually referred to herein as a "**Party**" and are collectively referred to herein as the "**Parties**."

WHEREAS, following approval by the New Hampshire Public Utilities Commission ("Commission") in Order 25,213 in Docket DE 10-195, PSNH and Berlin Station executed that certain Amended and Restated Power Purchase Agreement, dated as of May 18, 2011 (the "**Original PPA**").

WHEREAS, in 2018 N.H. Laws, Chapter 340 (a.k.a. SB 577), the Legislature enacted into law the finding that, "The general court finds that the continued operation of the Burgess BioPower plant in Berlin is important to the energy infrastructure of the state of New Hampshire and important for the attainment of renewable energy portfolio standard goals of fuel diversity, capacity, and sustainability." Section 271:1.

WHEREAS, 2018 N.H. Laws, 340:2,1 required the Commission to "amend its Order No. 25.213 (Docket DE 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect."

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

WHEREAS, on November 19, 2019, Parties executed and delivered that certain First Amendment to Amended and Restated Power Purchase Agreement (the "First Amendment"), which was subsequently filed with the Commission in Docket DE 19-142 to implement SB 577 and amend the terms of the Original PPA (the Original PPA, as amended by the First Amendment, the "**Agreement**").

WHEREAS, by Order No. 26,333 dated February 18, 2020, the Commission approved cost recovery for PSNH during the cap suspension, and approved the First Amendment in Docket DE 19-142.

WHEREAS, 2022 N.H. Laws, 275 (a.k.a. SB 271), the Legislature enacted into law the finding that. "the continued operation of the Burgess BioPower plant in Berlin: (a) is desirable to the energy infrastructure of the state of New Hampshire; (b) is a source of indigenously-sourced, reliable baseload power that contributes to regional fuel security and reliability of the regional electricity grid; (c) is important for the attainment of renewable energy portfolio

standard goals of fuel diversity, capacity, sustainability and energy independence: (d) is significant to the continued health of New Hampshire's forests; (e) provides valuable support to the timber industry; and (f) is a contributor of jobs and to the economy of both the North Country and the state as a whole." 2022 N.H. Laws, 275:1.

WHEREAS, 2022 N.H. Laws, 275 required the Commission to "reopen its Docket DE 10-195 and forthwith revise its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333" and further requires the Commission "to extend the suspension of the operation of the cap on the cumulative reduction factor as set forth on page 97 of Order No. 25,213 for an additional period of one year from the date the operation of the cap would have otherwise taken effect under Order No. 25,213 and Order No. 26,198 and Order No. 26.333 in Docket DE 19-142 regarding cost recovery for costs in excess of the cap to apply during the additional period in which the cap is extended." 2022 N.H. Laws, 275:1.

WHEREAS, on August 11, 2022, the Commission issued Order No. 26.665, modifying its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333, consistent with the legislation, and directed PSNH to submit the appropriate updates and changes to the Agreement for review and approval in a new Commission docket.

WHEREAS, PSNH and Berlin Station desire to amend the Agreement as provided herein to effectuate the findings of the Legislature in 2022 N.H. Laws, 275and Commission Order 26,665.

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

1. DEFINITIONS

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

2. AMENDMENT

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

Notwithstanding Section 6.1.2 above, beginning with the Operating Year ending on November 30, 2023, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars (\$100,000,000), such excess ("Excess Cumulative Reduction") will be credited against amounts otherwise due for Energy delivered to PSNH during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction ("Monthly Energy Credit") shall be deducted by PSNH from the Seller's invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that

amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by PSNH from the Seller's invoice in the next Operating Year in the same manner described above. If upon expiration of the Term PSNH does not purchase the Facility, Seller shall pay PSNH the amount of any Excess Cumulative Reduction.

3. MISCELLANEOUS

(a) Per RSA 374:57, PSNH must furnish a copy of this Second Amendment to the Commission upon its execution. This Second Amendment is conditioned upon and shall not become effective unless and until the New Hampshire Public Utilities Commission approves this Second Amendment without material modification or conditions with findings that PSNH's decision to enter into this Second Amendment consistent with a legislative mandate is reasonable and in the public interest, and that PSNH shall be allowed to recover all costs of the amended Agreement from customers via the non-bypassable rate mechanism of the Chapter 340 adder of PSNH's Stranded Cost Recovery Charge; which approval shall be final and not subject to appeal or rehearing and shall be acceptable to PSNH in its sole discretion (the "Amendment Regulatory Approval").

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

(c) If this Second Amendment becomes final after December 1, 2022, then the total amount of any Monthly Energy Credits that have been deducted from Seller's invoices during thirty-six (36) months following the initial occurrence of the Excess Cumulative Reduction shall be refunded to Seller and the amount of such refund shall be added to the Cumulative Reduction fund balance.

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

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

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

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

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

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

**PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE**

By: 

Name: James G Daly _____

Title: Vice President Energy Supply _____

BERLIN STATION, LLC

By: 

Name: John Halle _____

Title: Director _____