

ATTACHMENT A
Eversource's Solicitation
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ATTACHMENT B

Responses from Eligible Facilities

Eligible Facility Generator Name	Proposal at Attachment _B_
PINETREE POWER (BETHLEHEM)	I
BRIDGEWATER	II
HEMPHILL 1 (SPRINGFIELD POWER)	III
POINETREE POWER- TAMWORTH	IV
DG WHITEFIELD, LLC	V
INDECK ALEXANDRIA	Did not respond to solicitation

ATTACHMENT B, I

Response from Pinetree Power (Bethlehem)

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ATTACHMENT B, II
Response from Bridgewater
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ATTACHMENT B, III
Response from Hemphill
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ATTACHMENT B, IV
Response from Pinetree Power –
Tamworth
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ATTACHMENT B, V

Response from Indeck Alexandria

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ATTACHMENT C

Public Service Co. of New Hampshire, 131 FERC ¶ 61,027 (Apr. 15, 2010)

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ATTACHMENT D

NERA Petition, FERC Docket EL

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ATTACHMENT A
Eversource's Solicitation

November 6, 2018

TO: "Eligible Facility" Biomass Plants

Re: Solicitation Mandated by New Hampshire RSA Chapter 362-H, "The Preservation and Use of Renewable Generation to Provide Fuel Diversity"

On September 13, 2018, by the Legislature's override of the Governor's veto, Senate Bill 365 became effective. That Bill created RSA Chapter 362-H, "The Preservation and Use of Renewable Generation to Provide Fuel Diversity."

RSA 362-H:2 requires Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") to "offer to purchase the net energy output of any eligible facility located in its service territory..." Eversource believes that your biomass generating plant may be an "eligible facility" as defined in RSA 362-H:1,V.

Per RSA 362-H:2, Eversource is mandated to act in accordance with the following statutory provisions:

- I. (a) Prior to each of its next 6 sequential solicitations of its default service supply after the effective date of this chapter, each such electric distribution company shall solicit proposals, in one solicitation or multiple solicitations, from eligible facilities. The electric distribution company's solicitation to eligible facilities shall inform eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation. The solicitation shall provide that the electric distribution company's purchases of energy from the eligible facility shall be priced at the adjusted energy rate derived from the default service rates approved by the commission in each applicable default service supply solicitation and resulting rates proceeding.
- (b) The solicitation shall also inform the eligible facility that: (1) the electric distribution company's purchase from the eligible facility shall be at the eligible facility's interconnection point with the electric distribution company; (2) the purchase shall be from the eligible facility's net electrical output and not from the output of another unit; and (3) the electric distribution company's purchase would be for 100 percent of the eligible facility's net electrical output.
- II. Each eligible facility's proposal in response to such solicitation shall provide a non-binding proposed schedule of hourly net output amounts during the term

stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

Eversource's next solicitation for default service supply will take place in early November to obtain retail default energy service for the period from February 1, 2019 through July 31, 2019.

As required by RSA Chapter 362-H, Eversource is providing each eligible facility with the opportunity to offer to sell 100% of its net energy output to Eversource. Any such offers must be in accordance with the "Governing Terms" attached hereto.

The price for the energy will be the "adjusted energy rate" in \$/MWh defined by New Hampshire RSA 362-H:1, I as established and approved for the Delivery Period by the New Hampshire Public Utilities Commission ("NHPUC").

However, should there be any administrative or judicial challenge regarding the legality or enforceability of any part of NH RSA Chapter 362-H, then, during the pendency of any and all such challenges PSNH will pay the rate set forth in its Tariff for Electric Delivery Service – NHPUC No. 9, set forth in Section 33, "Rates for Purchases from Qualifying Facilities," for Product until such time as all challenges to NH RSA Chapter 362-H are finally resolved and not subject to further appeal.

Your response to Eversource must include the following:

1. Confirmation in writing representing that your facility is indeed an "eligible facility" under RSA Chapter 362-H.
2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a "qualifying facility" ("QF") under the Public Utility Regulatory Policies Act ("PURPA"), please provide a copy of the facility's QF certification.
3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.
4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource's next default energy solicitation.
5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

Eversource anticipates the following schedule:

RSA Ch. 362-H Solicitation Issued	11/6/18
RSA Ch. 362-H Responses Due	11/16/18
Eversource Receives Default ES Bids	12/11/18
RSA Ch. 362-H Final Confirmation Due	12/12/18
Eversource Filing with NHPUC	12/13/18
NHPUC Hearing	12/18/18
Requested NHPUC Decision	12/20/18
Delivery Begins	2/1/19

Eversource notes that this solicitation and Eversource's actions pursuant to RSA Chapter 362-H are mandated by the force of law and are not being undertaken voluntarily. Eversource's actions will be taken solely to comply with the police power of the State of New Hampshire as set forth in RSA Chapter 362-H and only if, and to the extent, reviewed and required by express Order of the New Hampshire Public Utilities Commission.

Please provide your response (including all five of the items set forth above) to Eversource by November 16, 2018 by e-mail to the following:

Frederick White
 860-665-5272 (phone)
 860-665-4583 (fax)
 rick.white@eversource.com

David Errichetti
 860-665-4519 (phone)
 860-665-4583 (fax)
 david.errichetti@eversource.com

Robert A. Bersak
 603-634-3355 (phone)
 603-634-2438 (fax)
 robert.bersak@eversource.com

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW, APPROVAL, AND AN ORDER MANDATING PERFORMANCE BY PSNH ISSUED BY THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by _____ (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction is mandated by force of law and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that PSNH purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned upon the review and approval of this Confirmation by the New Hampshire Public Utilities Commission (“NHPUC”), an Order from the NHPUC directing PSNH to make the purchases described herein, and an Order providing for full recovery by PSNH from its retail customers of all costs relating to these purchases as required by RSA 362-H:2,V. PSNH’s requirement to comply with the terms of this Confirmation arise solely from appropriate Orders issued by the NHPUC.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: _____
Legal Name

Address

Telephone

Entity Type and State of Formation

Eligible Facility: Seller's _____ MW biomass fired generating facility which is located in _____, New Hampshire, identified in the ISO-NE market settlement system with the Asset name _____ and ID # _____.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final, unappealable NHPUC Regulatory Approval or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I as established and approved for the Delivery Period by the New Hampshire Public Utilities Commission ("NHPUC").

However, should there be any administrative or judicial challenge regarding the legality or enforceability of any part of NH RSA Chapter 362-H, then, during the pendency of any and all such challenges PSNH will pay the rate set forth in its Tariff for Electric Delivery Service – NHPUC No. 9, set forth in Section 33, "Rates for Purchases from Qualifying Facilities," for Product until such time as all challenges to NH RSA Chapter 362-H are finally resolved and not subject to further appeal.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer, Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by giving PSNH, ID 50094, a 100% ownership share in the asset in the ISO-NE energy market. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures.

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- Approval of this Confirmation, including all ancillary documents, by NHPUC Order. Should such NHPUC Order be altered or amended in any way not acceptable to PSNH, this Confirmation and any transactions contemplated hereunder shall terminate.
- Issuance of an NHPUC Order directing PSNH to make the purchases described herein.
- Issuance of an NHPUC Order providing for full recovery by PSNH from its retail customers of all costs relating to these purchases as required by RSA 362-H:2, V.
- PSNH's requirement to comply with the terms of this Confirmation arise solely from an NHPUC Order.
- The Facility shall maintain its status as an "Eligible facility" per NH SB 365 and a "qualifying facility" pursuant to 18 C.F.R. Part 292 prior to the Term of this Agreement and maintain such status throughout such Term.

Definitions:

"Day-Ahead Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Real-Time Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Market Energy Clearing Price" means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real-time energy market, respectively.

"Unit Contingent" means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

"NHPUC Order" means receipt of a final, non-appealable decision from the New Hampshire Public Utilities Commission, approving this Confirmation, including all ancillary documents, as submitted without alteration, modification or condition, and allowing for full cost recovery of the rates, terms and conditions of this Agreement by the Buyer pursuant to RSA 362-H:2,V.

"Delivered Energy" is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
BETHLEHEM	337	Engie Energy Marketing NA, Inc	UN.WHITEFLD34.5BETH
BRIDGEWATER	357	Bridgewater Power Company, L.P	UN.ASHLAND 34.5BRID
HEMPHILL 1	436	Springfield Power, LLC	UN.NORTH_RD34.5HEMP
TAMWORTH	592	Engie Energy Marketing NA, Inc	UN.TAMWORTH115 TAMW
DG WHITEFIELD, LLC	618	Springfield Power, LLC	UN.WHITEFLD34.5WFPL
INDECK ALEXANDRIA	14211	Indeck Energy-Alexandria, L.L.	UN.PEMIGWAS34.5ALEX

Governing Terms:

All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices:

Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:

Frederick White
860-665-5272 (phone)
860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:

David Errichetti
860-665-4519 (phone)
860-665-4583 (fax)
david.errichetti@eversource.com

If to Seller:

Primary Contact:

_____ (name)
_____ (phone)
_____ (fax)
_____ (email)

Secondary Contact:

_____ (name)
_____ (phone)
_____ (fax)
_____ (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for approval of default rates and sales under RSA Chapter 362-H in order to gain Regulatory Approval.

Seller

BY

Name:

Title:

Date

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntarily act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that PSNH purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the Facility owned by Seller as set forth in Exhibit A.

PSNH’s performance hereunder is expressly subject to and conditioned upon the review and approval of the New Hampshire Public Utilities Commission (“NHPUC”), an Order from the NHPUC directing PSNH to make the purchases described herein, and an Order providing for full recovery by PSNH from its retail customers of all costs relating to these purchases as required by RSA 362-H:2,V. All such Orders must be in a form acceptable to the Buyer and must be final and not subject to appeal or rehearing. PSNH’s requirement to comply with these Governing Terms arises solely from the police power of the State of New Hampshire as expressed in RSA Chapter 362-H and/or an appropriate Order issued by the NHPUC.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in Exhibit A.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time, less such Facility’s station service use, generator lead losses and transformer losses, which quantity for purposes of these Governing Terms will never be less than zero.

“Energy Price” shall have the meaning as set forth in Exhibit A.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in Exhibit A.

“FERC” shall mean the United States Federal Energy Regulatory Commission, and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean compliance with all applicable laws, codes and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean that the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall have the meaning set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“Law” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“Locational Marginal Price” or **“LMP”** shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“Meters” shall have the meaning set forth in Section 4.6(a) hereof.

“MW” shall mean a megawatt.

“MWh” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“NEPOOL” shall mean the New England Power Pool and any successor organization.

“NEPOOL Participants Agreement” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“NERC” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“New England Control Area” shall have the meaning as set forth in the ISO-NE Tariff.

“Party” and **“Parties”** shall have the meaning set forth in the first paragraph of these Governing Terms.

“Permits” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“Person” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“Pool Transmission Facilities” has the meaning given that term in the ISO-NE Rules.

“Price” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on Exhibit A.

“Products” shall mean Energy only.

“QF” shall mean a cogeneration or small power production facility recognized by FERC as a qualifying facility as defined in Title 18 of the Code of Federal Regulations, Part 292, subpart B, as amended from time to time.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s approval of this Transaction, including the authorization for recovery by Buyer of all costs incurred under, or in connection with, this Transaction for the entire Term of this Transaction, which approval is acceptable in form and substance to Buyer, does not include any conditions or modifications that Buyer deems to be unacceptable, includes a legal mandate ordering Buyer to perform, and is final and not subject to appeal or rehearing.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in Exhibit A.

“Term” shall have the meaning set forth in Exhibit A.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in Exhibit A.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in Exhibit A.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC and any applicable regional reliability entities, as applicable.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall maintain the Facility's status as a QF throughout the Term and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the “Lead Market Participant” (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The Meters shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in Exhibit A.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, and the performance by Buyer of its obligations hereunder are mandated by New Hampshire law and subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a transfer permitted under these Governing Terms; or

(e) Assignment. The assignment of these Governing Terms by Seller, or Seller's sale or transfer of its interest (or any part thereof) in the Facility, except as permitted in accordance with Article 14.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Disqualification. Upon the occurrence of an Event of Default by Seller, both Seller and the Facility shall be disqualified from future participation in the program established by NH RSA Chapter 362-H.

(d) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the NHPUC disclaims jurisdiction because the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

10.2 Consent to Jurisdiction. The Transaction shall be subject to the jurisdiction of the NHPUC in connection with any Dispute arising out of or in connection with these Governing Terms.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

14.2 Consolidation of Financial Information. Generally accepted accounting principles and SEC rules may, from time to time, and in accordance with such accounting principles and rules change throughout the Term, requiring Buyer to have access to Seller's financial records and personnel. Seller shall provide to Buyer within fifteen (15) days of receipt of Buyer's written request, any and all listed financial information and statements then available to Seller as well as access to financial personnel, so that Buyer may comply with generally accepted accounting principles and SEC rules for financial reporting purposes.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in Exhibit A.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision. Buyer shall determine whether any amendment or waiver of the provisions of these Governing Terms shall require NHPUC approval, and if Buyer determines that such approval is required for any amendment or waiver of the provisions of these Governing Terms, then such amendment or waiver shall not become effective unless and until such approval is obtained.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words "hereof" and "hereunder" shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO- NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer shall modify these Governing Terms and submit the modified document to the NHPUC for its review and approval. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review and approval.

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

ATTACHMENT B

Responses from Eligible Facilities

Eligible Facility Generator Name	Proposal at Attachment _B_
PINETREE POWER (BETHLEHEM)	I
BRIDGEWATER	II
HEMPHILL 1 (SPRINGFIELD POWER)	III
POINETREE POWER- TAMWORTH	IV
DG WHITEFIELD, LLC	V
INDECK ALEXANDRIA	Did not respond to solicitation

ATTACHMENT B, I

Response from Pinetree Power (Bethlehem)

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

Tenacity. Creativity. Results.™

Timothy J. McLaughlin
Attorney at Law

November 16, 2018

Via e-mail only: **robert.bersak@eversource.com**
 rick.white@eversource.com
 david.errichetti@eversource.com

Eversource Energy
Attn: Robert Bersak, Frederick White and David Errichetti
107 Selden Street
Berlin, CT 06037

P.O. Box 270
Hartford CT 06141

Re: Pinetree Power LLC

Dear Messrs. Bersak, White and Errichetti,

In accordance with the provisions of RSA 362-H, and in response to Public Service Company of New Hampshire d/b/a Eversource's ("Eversource") November 6, 2018 solicitation letter, Shaheen & Gordon, P.A. submits the following proposal on behalf of Pinetree Power LLC:

- Response to Questions;
- Draft Confirmation;
- Governing Terms Proposal;
- QF Certification; and
- Secretary of State Certificate.

As you know, RSA 362-H creates a 3-step process under which Eversource must offer to purchase the net energy output of eligible facilities: (1) solicitations of proposals from eligible facilities by Eversource; (2) proposals by eligible facilities; and (3) submission to the PUC of eligible facility proposals that conform with the statute.

In accord with the statute, Eversource was required to solicit proposals from eligible facilities that informed "eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation." The

statue further requires that the solicitation provide certain information concerning pricing and other statutorily required information.

In response to the solicitation, an eligible facility is to submit a proposal and “a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.”

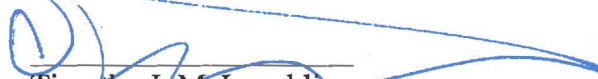
Eversource is then to “select all proposals from eligible facilities that conform to the requirements of this section.” These proposals are then submitted to the PUC as part of Eversource’s “submission for periodic approval of its residential electric customer default service supply solicitation.”

We engage in this brief statutory review because Eversource’s solicitation contains requirements, terms and conditions that are extraneous, in conflict with the statute, and contrary to the statute’s purpose and intention.

Without waiving any rights, in the eligible facility proposal we have accepted certain of the terms and conditions from your November 6, 2018 solicitation. The eligible facility proposal submitted hereby conforms with the statue. If you claim that the proposal does not conform with the statue, please let us know with specificity the reasons for your assertion of non-compliance by November 22, 2018. If there is no claim of non-compliance, then we expect Eversource will submit the proposal to the PUC in accordance with the statute, and we similarly expect to be so notified thereof by November 22, 2018.

Finally, if you do not intend to submit the proposal to the PUC as required by statue, then we shall do so.

Sincerely,



Timothy J. McLaughlin
tmclaughlin@shaheengordon.com

TJM/jpk

cc: Pinetree Power LLC

Encl.: Response to Questions
Draft Confirmation
Governing Terms Proposal
QF Certification
Secretary of State Certificate

Pinetree Power, LLC (Seller) Response to PSNH RSA 362-H Offer To Purchase Net Energy Output

1. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.

A: Seller confirms that the Facility is an “Eligible Facility” as defined in RSA 362-H:1, V(a) given that the Facility: (i) produces electricity for sale by the use of biomass fuel as its primary energy source, (ii) has a power production capacity not greater than 25 megawatts excluding station service, (iii) is interconnected with an electric distribution or transmission system located in New Hampshire, and (iv) began operation prior to January 1, 2006.

2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.

A: The requested information is not required pursuant to RSA 362-H. However, Seller confirms that it currently has such authority as a QF (attached), but is separately seeking market-based rate authority under Section 205 of the Federal Power Act.

3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.

A: See attached

4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.

A: RSA 362-H:2, II provides:

II. Each eligible facility’s proposal in response to such solicitation shall provide a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

During the Term, as defined in the Confirmation, Seller anticipates hourly operation each month of approximately 15.5 MW. Resulting net monthly generation should be between 10,000-11,600 MWh, except during April 2019, where a scheduled outage will bring net generation to approximately 8,500 MWhs for that month.

5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

A: Attached is Seller's proposed executed draft Confirmation in conformity with RSA 362-H.

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW OF THIS CONFIRMATION AND ITS ATTACHMENT A AS BEING IN CONFORMITY WITH RSA 362-H.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by Pinetree Power LLC (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction arises from RSA 362-H and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362- H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned by the terms herein and in Attachment A and an order from the NHPUC reviewing this Confirmation and its Attachment A and finding that they are in conformity with RSA 362-H.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: **PINETREE POWER LLC**
Legal Name

1241 Whitefield Rd. Bethlehem, NH 03574
Address

603-444-9993
Telephone

Limited Liability Company - NH
Entity Type and State of Formation

Eligible Facility: Seller's 15.5 MW biomass fired generating facility which is located in Bethlehem, New Hampshire, identified in the ISO-NE market settlement system with the Asset name Bethlehem and ID # 337.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final NHPUC Determination that this Confirmation and its Attachment A are in conformity with RSA 362-H or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

For the Delivery Period, PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I, which will be either: (i) 80% of the difference between the competitively determined default energy rate, and the rate component for compliance with RSA 362-F, if included in the default energy rate, or (ii) 80% of the competitively determined default energy rate if the rate component for compliance with RSA 362-F is not included in the default energy rate.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer (other than Buyer's reluctance to pay the adjusted energy rate for this energy), Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by designating PSNH, ID 50094, the Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue that PSNH receives from ISO-NE shall be credited to Seller by the 21st day of the next month.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset

and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures. [PSNH needs to explain how this clause conforms with previous clause requesting that PSNH be Asset Owner for ISO-NE billing and settlement purposes.]

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- An order of the NHPUC reviewing this Confirmation and its Attachment A and finding them to be in conformity with RSA 362-H,
- PSNH’s requirement to comply with the terms of RSA 362-H arise solely from RSA 362-H.
- The Facility shall maintain its status as an “Eligible facility” per RSA 362-H throughout such Term.

Cost Recovery:

As provided in RSA 362-H:2, V PSNH is eligible to recover the Transaction’s difference between its energy purchase costs and the market clearing price through a nonbypassable delivery services charge applicable to all customer’s in PSNH’s service territory. The charge may include reasonable costs incurred by PSNH, and the charges shall be allocated using the customer class allocation percentages approved in NHPUC docket DE 14-238, order 25,920.

Definitions:

“**Day-Ahead Locational Marginal Price**” shall be given the meaning given it in ISO NE Market Rule 1.

“**Real-Time Locational Marginal Price**” shall be given the meaning given it in ISO NE Market Rule 1.

“**Market Energy Clearing Price**” means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real -time energy market, respectively.

“**Unit Contingent**” means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

“**NHPUC Order**” means receipt of a final, decision from the New Hampshire Public Utilities Commission, stating that it has reviewed this Confirmation and its Attachment A and finds they are in conformity with RSA 362-H.

“**Delivered Energy**” is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
Bethlehem	337	Engie Energy Marketing NA, Inc.	UN.WHITEFLD34.5BETH

Governing Terms: All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices: Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:

Frederick White
860-665-5272 (phone)
860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:

David Errichetti
860-665-4519 (phone)
860-665-4583 (fax)
david.errichetti@eversource.com

If to Seller:

Primary Contact:

Mark Driscoll (name)
603-444-9993, ex. 12 (phone)
603-444-6476 (fax)
Mark.driscoll@engie.com (email)

Secondary Contact:

Alonzo Ramirez (name)
713-636-1237 (phone)
713-636-1858 (fax)
Alonzo.ramirez@engie.com (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for the commission's review of this Confirmation and its Attachment A for conformity with RSA 362-H.

PINETREE POWER LLC

JS

BY _____

Name: STEFAAN SEROU

Title: PRESIDENT

Date NOVEMBER 15, 2018

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntary act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the facility owned by Seller as set forth in the Confirmation (the “Facility”).

PSNH’s performance hereunder is expressly subject to and conditioned upon the terms herein and in the Confirmation and an order from the New Hampshire Public Utilities Commission (“NHPUC”) reviewing the Confirmation and Governing Terms and finding that provisions addressed by RSA 362-H and contained herein are in conformity with RSA 362-H.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the point of interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in the Confirmation.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time at the Buyer’s meter used for billing and revenue determination.

“Energy Price” shall have the meaning as set forth in the Confirmation.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in the Confirmation.

“FERC” shall mean the United States Federal Energy Regulatory Commission and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean any practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility, or between Seller, the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall mean the point of interconnection set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“**Law**” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“**Locational Marginal Price**” or “LMP” shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Participants Agreement**” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**New England Control Area**” shall have the meaning as set forth in the ISO-NE Tariff.

“**Party**” and “**Parties**” shall mean the Buyer as defined herein and/or Seller, as defined in the Confirmation.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on the Confirmation.

“**Products**” shall mean Energy only.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s order reviewing the Governing Terms and the Confirmation and finding that they are in conformity with RSA 362-H, provided that such order does not include any conditions or modifications that are inconsistent with RSA 362-H.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in the Confirmation.

“Term” shall have the meaning set forth in the Confirmation.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in the Confirmation.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy, and as further defined in the Confirmation.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in the Confirmation.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC (if applicable) and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage required under the Facility's existing Interconnection Agreement and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of the initial sale under the Confirmation, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies,

criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall obtain and maintain any requisite authority to sell the output of the Facility under applicable law.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms and the Confirmation. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Throughout the Term, Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The meter used by Buyer (or its Affiliate) for billing and revenue purposes shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in the Confirmation.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided

in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, is subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a sale or transfer of the Facility and the Governing Terms and Confirmation; or

(e) Assignment. The assignment of these Governing Terms by Seller, except as permitted in accordance with Article 12.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party or in connection with Seller's sale or transfer of its interest (or any part thereof) in the Facility.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in the Confirmation.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words “hereof” and “hereunder” shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer, in consultation with Seller, shall modify these Governing Terms and submit the modified document to the NHPUC for its review for conformity with RSA 362-H. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review for conformity with RSA 362-H .

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms and the Confirmation shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

ANDREWS
ATTORNEYS
KURTH LLP

1350 I Street, NW
Suite 1100
Washington, D.C. 20005
202.662.2700 Phone
202.662.2739 Fax
andrewskurth.com

December 15, 2008

VIA ELECTRONIC FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Notice of Self-Recertification of Qualifying Facility Status of Pinetree Power, Inc.
to Reflect Change of Ownership, Docket No. QF85-270-005

Dear Ms. Bose:

Attached for electronic filing is a notice of the self-recertification of the Pinetree Power, Inc. as a Qualifying Cogeneration Facility. As required under Sections 292.207(a)(1) and 131.80 of the Federal Energy Regulatory Commission's Regulations, 18 C.F.R. §§ 131.80 and 292.207 (2008), this notice of self-recertification is being submitted in the format prescribed by the Commission's Form 556.

If there are any questions about the instant filing, please feel free to contact me at the number listed above.

Very truly yours,



Kenneth L. Wiseman
Mark F. Sundback
Jennifer L. Spina

Attachments

FERC Form No. 556
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

Pinetree Power, Inc. ("Pinetree Power")

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

QF85-270-004. A notice of application for Commission certification as a small power production facility was filed on March 1, 1985. Supplements to the notice of application were filed on September 5, 2003, January 23, 2004, March 18, 2005 and November 28, 2006.

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

Self-recertification. The purpose of this filing is to notify the Commission of: (i) changes in the upstream ownership of the Pinetree Power, Inc. facility, an approximately 15.9 MW small power production facility located in Bethlehem, New Hampshire (the “Facility”), which have occurred since the last filing in this docket, and (ii) to provide the Commission with certain information which was not provided in the original application, but has subsequently become required, or which has changed since the Facility was certified by the Commission.

1b. Full address of applicant:

**Pinetree Power, Inc. c/o GDF SUEZ S.A.
Attn: James L. Thorne
Senior Regulatory Counsel
GDF SUEZ Energy North America, Inc.
1990 Post Oak Blvd., #1900
Houston, TX 77056
713-636-1396
James.Thorne@gdfsuezna.com**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility.

The Facility is wholly owned, and operated, by Pinetree Power. Pinetree Power is owned 100% by SUEZ Energy Generation North America, Inc, an indirect wholly-owned subsidiary of GDF SUEZ S.A. (“GDF SUEZ”), an electric utility holding company.

Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities.

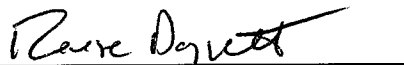

GDF SUEZ owns indirectly a 12.469% in Gaz Metro Limited Partnership, which is the corporate parent of Green Mountain Power Corporation (“Green Mountain”). Green Mountain is a small, vertically-integrated electric utility with market-based rate authority that is engaged primarily in the distribution and sale of electricity to retail and wholesale electric service customers in Vermont. Except for certain facilities, the output of which is not transmitted to the grid, neither GDF SUEZ nor any of its subsidiaries, other than Green Mountain, are currently engaged in the generation or sale of electric power in the United States, other than the sale of electric power from QFs or eligible facilities of exempt wholesale generators (“EWGs”), or sales made by power marketers, or have any ownership or operating

interest in any electric facilities, other than those owned by QFs, EWGs and power marketers. The electric facilities that are not owned by QFs, EWGs or power marketers, and whose output is not transmitted to the grid, are owned by College Park Energy, LLC, Hawkins Point Energy, LLC, SUEZ-DEGS of Lansing, LLC and SUEZ-DEGS of Owings Mills, LLC., all of which are indirect subsidiaries of GDF SUEZ. Each of those subsidiaries has entered into "inside-the-fence" arrangements. One way in which those arrangements are structured is that the GDF SUEZ subsidiary operates an electric generation facility owned by a third-party and the output of the electric facility is provided to the owner for its consumption "inside-the-fence." The other alternative is that the GDF SUEZ subsidiary owns the electric generation facility, leases it to a third-party who operates it, and the lessee then provides the power to its structures that are "inside-the-fence."

In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

A diagram depicting the current upstream ownership of the Facility is attached as Attachment 1.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]


 Name: Reese Doggett 
 Title: Vice President – Asset Management

2. Person to whom communications regarding the filed information may be addressed:

Name: James L. Thorne
 Title: Senior Regulatory Counsel
 Telephone: (713) 636-1396
 Mailing Address: GDF SUEZ Energy North America, Inc.
 1990 Post Oak Blvd., #1900
 Houston, TX 77056

Name: Kenneth L. Wiseman
 Mark F. Sundback
 Jennifer L. Spina
 Title: Counsel for GDF SUEZ S.A.

Telephone: **(202) 662-2700**
Mailing Address: **Andrews Kurth LLP**
1350 I Street, NW
Suite 1100
Washington, DC 20005

3a. Location of facility to be certified:

State: **New Hampshire**

County: **Grafton County**

City or town: **Bethlehem**

Street address (if known): **1241 Whitefield Road
Bethlehem, New Hampshire 03574**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

Public Service Company of New Hampshire provides interconnection and transmission services, as well as maintenance power, to Bethlehem Power Station.

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

Public Service Company of New Hampshire.

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

Public Service Company of New Hampshire

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

Public Service Company of New Hampshire provides maintenance power.

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

The Facility is a small power production facility utilizing wood as a biomass fuel. The facility consists of a single boiler and steam turbine to produce 15.9 MW net generating capability.

4b. Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross Power Production: **17.1 MW**

Net Power Production: **15.9 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output): Auxiliary Loads: **1.2 MW**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

The Facility commenced operations in December 1986.

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R § 292.202(b)].

The fuel for the Facility is biomass in the form of wood chips, bark and wood fines.

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R § 292.202(m)]:

The primary energy source for the Facility is biomass in the form of wood chips, bark and fines. The Facility does not use natural gas, coal or oil.

Coal: N/A

Natural gas: N/A

Oil: N/A

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None.

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

There is no planned usage of natural gas, oil, or coal by the facility.

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

9. Describe the cogeneration system [18 C.F.R §§ 292.202(c) and 292.203(b)], and state whether the facility is a topping-cycle [18 C.F.R § 292.202(d)] or bottoming-cycle [18 C.F.R § 292.202(e)] cogeneration facility.

N/A

10. To demonstrate the sequentiality of the cogeneration process [18 C.F.R § 292.202(s)] and to support compliance with other requirements such as the operating and efficiency standards (Item 11 below), provide a mass and heat balance (cycle) diagram depicting average annual hourly operating conditions. Also, provide:

Using lower heating value [18 C.F.R § 292.202(m)], all fuel flow inputs in Btu/hr., separately indicating fossil fuel inputs for any supplementary firing in Btu/hr. [18 C.F.R § 292.202(f)]:

N/A

Average net electric output (kW or MW) [18 C.F.R § 292.202(g)]:

N/A

Average net mechanical output in horsepower [18 C.F.R § 292.202(g)]:

N/A

Number of hours of operation used to determine the average annual hourly facility inputs and outputs:

N/A

Working fluid (e.g., steam) flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application, including flow rates (lbs./hr.), temperature (deg. F), pressure (psia), and enthalpy (Btu/lb.):

N/A

11. Compute the operating value [applicable to a topping-cycle facility under 18 C.F.R § 292.205(a)(1)] and the efficiency value [18 C.F.R §§ 292.205(a)(2) and (b)], based on the information provided in and corresponding to item 10, as follows:

Pt = Average annual hourly useful thermal energy output

Pe = Average annual hourly electrical output

Pm = Average annual hourly mechanical output

Pi = Average annual hourly energy input (natural gas or oil)

Ps = Average annual hourly energy input for supplementary firing (natural gas or oil)

Operating standard = 5% or more

Operating value = $Pt / (Pt + Pe + Pm)$

N/A

Efficiency standard applicable to natural gas and oil fuel used in a topping-cycle facility:

= 45% or more when operating value is less than 15%, or 42.5% or more when operating value is equal to or greater than 15%.

Efficiency value = $(Pe + Pm + 0.5Pt) / (Pi + Ps)$

N/A

Efficiency standard applicable to natural gas and oil fuel used for supplementary firing component of a bottoming-cycle facility:

= 45% or more

Efficiency value = $(Pe + Pm) / Ps$

N/A

FOR TOPPING-CYCLE COGENERATION FACILITIES

Items 12 and 13 only need to be answered by applicants seeking certification as a topping-cycle cogeneration facility. Applicants for certification as a small power production facility or bottoming-cycle cogeneration facility may delete Items 12 and 13 from their application, or enter "N/A" at each item.

12. Identify the entity (i.e., thermal host) which will purchase the useful thermal energy output from the facility [18 C.F.R § 292.202(h)]. Indicate whether the entity uses such output for the purpose of space and water heating, space cooling, and/or process use.

N/A

13. In connection with the requirement that the thermal energy output be useful [18 C.F.R § 292.202(h)]:

For process uses by commercial or industrial host(s), describe each process (or group of similar processes using the same quality of steam) and provide the average annual hourly thermal energy made available to the process, less process return. For a complex system, where the primary steam header at the host-side is divided into various sub-uses, each having different pressure and temperature characteristics, describe the processes associated with each sub-use and provide the average annual hourly thermal energy delivered to each sub-use, less process return from such sub-use. Provide a diagram showing the main steam header and the sub-uses with other relevant information such as the average header pressure (psia), the temperature (deg.F), the enthalpy (Btu/lb.), and the flow (lb./hr.), both in and out of each sub-use. For space and water heating, describe the type of heating involved (e.g., office space heating, domestic water heating) and provide the average annual hourly thermal energy delivered and used for such purpose. For space cooling, describe the type of cooling involved (e.g., office space cooling) and provide the average annual hourly thermal energy used by the chiller.

N/A

FOR BOTTOMING-CYCLE FACILITIES

Item 14 only needs to be answered by applicants seeking certification as a bottoming-cycle cogeneration facility. Applicants for certification as a small power production facility or topping-cycle cogeneration facility may delete Item 14 from their application, or enter "N/A."

14. Provide a description of the commercial or industrial process or other thermal application to which the energy input to the system is first applied and from which the reject heat is then used for electric power production.

N/A

FOR NEW COGENERATION FACILITIES

Response to Item 15 is only required for certain applicants for qualified cogeneration facility status, as described below. Applicants for small power production facilities or for cogeneration facilities not meeting the criteria outlined below may delete Item 15 from their application, or enter "N/A." In addition, per 18 C.F.R. § 292.205(d)(4) all cogeneration facilities 5 MW and smaller are presumed to comply with the requirements of 18 C.F.R. § 292.205(d)(1) and (d)(2), and therefore need not respond to Item 15. For those applicants required to respond to Item 15, *see* 18 C.F.R. § 292.205(d) and Order No. 671 for more information on making the demonstrations required in Item 15.

15. For any cogeneration facility that had not filed a notice of self-certification or an application for Commission certification under 18 C.F.R. § 292.207 prior to February 2, 2006, also show:

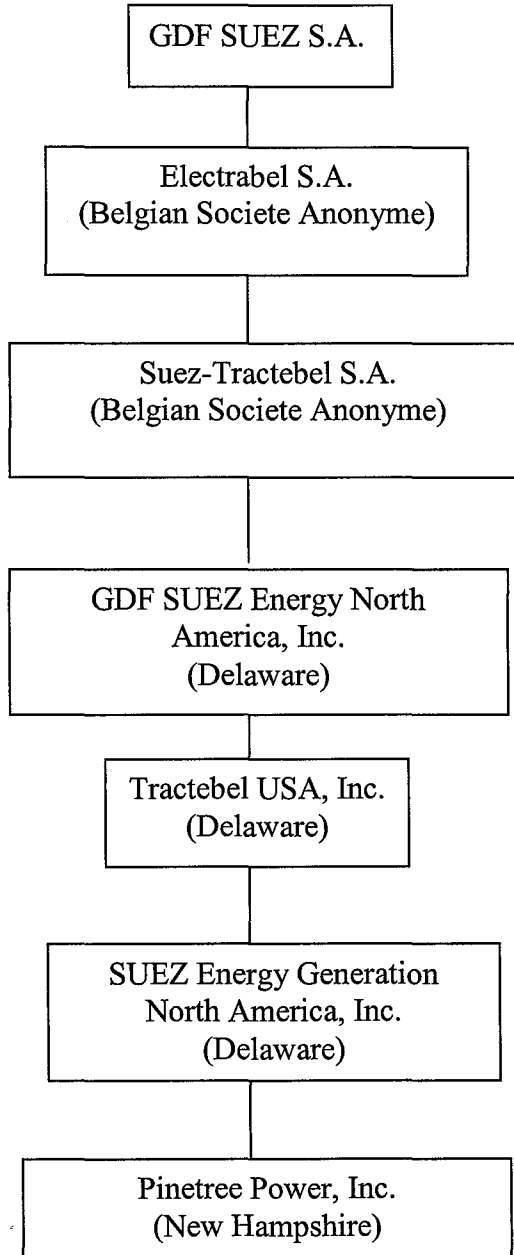
(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner [18 C.F.R §§ 292.205(d)(1), (d)(4) and (d)(5)]; and

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility [18 C.F.R §§ 292.205(d)(2), (d)(3) and (d)(4)].

N/A

Attachment 1
[Ownership Chart]

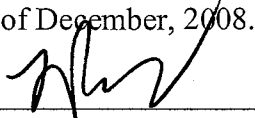
Organization Chart Pinetree Power, Inc.



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing notice of self-recertification of the Pinetree Power, Inc. Facility upon each person designated on the official service list compiled by the Secretary in Docket No. QF85-270-000 and upon any affected utilities and State regulatory authorities in accordance with 18 C.F.R. § 292.207(a)(1)(ii).

Dated at Washington, DC, this 15th day of December, 2008.



Lisa M. Purdy

Document Content(s)

Notice.PDF.....1-15

State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PINETREE POWER LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on August 23, 1984. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 78858

Certificate Number: 0004211093



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 14th day of November A.D. 2018.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

ATTACHMENT B, II
Response from Bridgewater

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

Tenacity. Creativity. Results.™

Timothy J. McLaughlin
Attorney at Law

November 16, 2018

Via e-mail only: **robert.bersak@eversource.com**
 rick.white@eversource.com
 david.errichetti@eversource.com

Eversource Energy
Attn: Robert Bersak, Frederick White and David Errichetti
107 Selden Street
Berlin, CT 06037

P.O. Box 270
Hartford CT 06141

Re: Bridgewater Power Company, L.P.

Dear Messrs. Bersak, White and Errichetti,

In accordance with the provisions of RSA 362-H, and in response to Public Service Company of New Hampshire d/b/a Eversource's ("Eversource") November 6, 2018 solicitation letter, Shaheen & Gordon, P.A. submits the following proposal on behalf of Bridgewater Power Company, L.P.:

- Response to Questions;
- Draft Confirmation;
- Governing Terms Proposal;
- QF Certification; and
- Secretary of State Certificate.

As you know, RSA 362-H creates a 3-step process under which Eversource must offer to purchase the net energy output of eligible facilities: (1) solicitations of proposals from eligible facilities by Eversource; (2) proposals by eligible facilities; and (3) submission to the PUC of eligible facility proposals that conform with the statute.

In accord with the statute, Eversource was required to solicit proposals from eligible facilities that informed "eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation." The

statute further requires that the solicitation provide certain information concerning pricing and other statutorily required information.

In response to the solicitation, an eligible facility is to submit a proposal and “a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.”

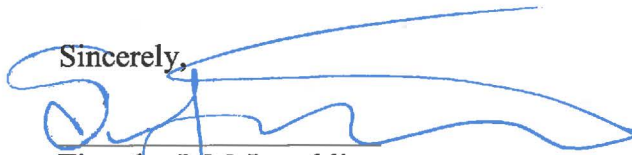
Eversource is then to “select all proposals from eligible facilities that conform to the requirements of this section.” These proposals are then submitted to the PUC as part of Eversource’s “submission for periodic approval of its residential electric customer default service supply solicitation.”

We engage in this brief statutory review because Eversource’s solicitation contains requirements, terms and conditions that are extraneous, in conflict with the statute, and contrary to the statute’s purpose and intention.

Without waiving any rights, in the eligible facility proposal we have accepted certain of the terms and conditions from your November 6, 2018 solicitation. The eligible facility proposal submitted hereby conforms with the statute. If you claim that the proposal does not conform with the statute, please let us know with specificity the reasons for your assertion of non-compliance by November 22, 2018. If there is no claim of non-compliance, then we expect Eversource will submit the proposal to the PUC in accordance with the statute, and we similarly expect to be so notified thereof by November 22, 2018.

Finally, if you do not intend to submit the proposal to the PUC as required by statute, then we shall do so.

Sincerely,



Timothy J. McLaughlin
tmclaughlin@shaheengordon.com

TJM/jpk

cc: Bridgewater Power Company, L.P.

Encl.: Response to Questions
Draft Confirmation
Governing Terms Proposal
QF Certification
Secretary of State Certificate

Bridgewater Power Company, L.P (Seller) Response to PSNH RSA 362-H Offer To Purchase Net Energy Output

1. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.

A: Seller confirms that the Facility is an “Eligible Facility” as defined in RSA 362-H:1, V(a) given that the Facility: (i) produces electricity for sale by the use of biomass fuel as its primary energy source, (ii) has a power production capacity not greater than 25 megawatts excluding station service, (iii) is interconnected with an electric distribution or transmission system located in New Hampshire, and (iv) began operation prior to January 1, 2006.

2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.

A: The requested information is not required pursuant to RSA 362-H. However, Seller confirms that it currently has such authority as a QF (attached), but is separately seeking market-based rate authority under Section 205 of the Federal Power Act.

3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.

A: See attached

4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.

A: RSA 362-H:2, II provides:

II. Each eligible facility’s proposal in response to such solicitation shall provide a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

During the Term, as defined in the Confirmation, Seller anticipates hourly operation each month in a range of 12.5-14.5 MW with a potential high hourly operation at 15.7 MW. Resulting net monthly generation should be between 10,000-11,500 MWh, except during May 2019, where a scheduled outage will bring net generation to approximately 8,500 MWhs for that month.

5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

A: Attached is Seller's proposed executed draft Confirmation in conformity with RSA 362-H.

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW OF THIS CONFIRMATION AND ITS ATTACHMENT A AS BEING IN CONFORMITY WITH RSA 362-H.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by Bridgewater Power Company, L.P. (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction arises from RSA 362-H and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362- H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned by the terms herein and in Attachment A and an order from the NHPUC reviewing this Confirmation and its Attachment A and finding that they are in conformity with RSA 362-H.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: **Bridgewater Power Company, L.P.**
Legal Name

P.O. Box 678 Ashland, NH 03217
Address

603-968-9602
Telephone

Limited Partnership -NH
Entity Type and State of Formation

Eligible Facility: Seller's 15.7 MW biomass fired generating facility which is located in Bridgewater, New Hampshire, identified in the ISO-NE market settlement system with the Asset name Bridgewater and ID # 357.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final NHPUC Determination that this Confirmation and its Attachment A are in conformity with RSA 362-H or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

For the Delivery Period, PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I, which will be either: (i) 80% of the difference between the competitively determined default energy rate, and the rate component for compliance with RSA 362-F, if included in the default energy rate, or (ii) 80% of the competitively determined default energy rate if the rate component for compliance with RSA 362-F is not included in the default energy rate.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer (other than Buyer's reluctance to pay the adjusted energy rate for this energy), Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by designating PSNH, ID 50094, the Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue that PSNH receives from ISO-NE shall be credited to Seller by the 21st day of the next month.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures. [PSNH need to explain how this clause conforms with previous clause requesting that PSNH be Asset Owner for ISO-NE billing and settlement purposes.]

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- An order of the NHPUC reviewing this Confirmation and its Attachment A and finding them to be in conformity with RSA 362-H,
- PSNH's requirement to comply with the terms of RSA 362-H arise solely from RSA 362-H.
- The Facility shall maintain its status as an "Eligible facility" per RSA 362-H throughout such Term.

Cost Recovery:

As provided in RSA 362-H:2, V PSNH is eligible to recover the Transaction's difference between its energy purchase costs and the market clearing price through a nonbypassable delivery services charge applicable to all customer's in PSNH's service territory. The charge may include reasonable costs incurred by PSNH, and the charges shall be allocated using the customer class allocation percentages approved in NHPUC docket DE 14-238, order 25,920.

Definitions:

"Day-Ahead Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Real-Time Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Market Energy Clearing Price" means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real-time energy market, respectively.

"Unit Contingent" means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

"NHPUC Order" means receipt of a final, decision from the New Hampshire Public Utilities Commission, stating that it has reviewed this Confirmation and its Attachment A and finds they are in conformity with RSA 362-H.

"Delivered Energy" is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
BRIDGEWATER	357	Bridgewater Power Company, L.P.	UN.ASHLAND 34.5BRID

Governing Terms: All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices: Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:

Frederick White
860-665-5272 (phone)
860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:

David Errichetti
860-665-4519 (phone)
860-665-4583 (fax)
david.errichetti@eversource.com

If to Seller:

Primary Contact:

Michael O'Leary (name)
603-968-9602 ex. 11(phone)
603-968-9605(fax)
moleary@bridgewater-os.com (email)

Secondary Contact:

Sean Lane (name)
973-753-0181 (phone)
973-254-3619 (fax)
slane@olympuspower.com (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for the commission's review of this Confirmation and its Attachment A for conformity with RSA 362-H.

BRIDGEWATER POWER COMPANY, L.P.



BY _____
Name: Michael O'Leary
Title: Asset Manager
Date 11/15/18

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntary act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the facility owned by Seller as set forth in the Confirmation (the “Facility”).

PSNH’s performance hereunder is expressly subject to and conditioned upon the terms herein and in the Confirmation and an order from the New Hampshire Public Utilities Commission (“NHPUC”) reviewing the Confirmation and Governing Terms and finding that provisions addressed by RSA 362-H and contained herein are in conformity with RSA 362-H.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the point of interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in the Confirmation.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time at the Buyer’s meter used for billing and revenue determination.

“Energy Price” shall have the meaning as set forth in the Confirmation.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in the Confirmation.

“FERC” shall mean the United States Federal Energy Regulatory Commission and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean any practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility, or between Seller, the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall mean the point of interconnection set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“**Law**” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“**Locational Marginal Price**” or “LMP” shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Participants Agreement**” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**New England Control Area**” shall have the meaning as set forth in the ISO-NE Tariff.

“**Party**” and “**Parties**” shall mean the Buyer as defined herein and/or Seller, as defined in the Confirmation.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on the Confirmation.

“**Products**” shall mean Energy only.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s order reviewing the Governing Terms and the Confirmation and finding that they are in conformity with RSA 362-H, provided that such order does not include any conditions or modifications that are inconsistent with RSA 362-H.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in the Confirmation.

“Term” shall have the meaning set forth in the Confirmation.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in the Confirmation.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy, and as further defined in the Confirmation.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in the Confirmation.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC (if applicable) and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage required under the Facility's existing Interconnection Agreement and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of the initial sale under the Confirmation, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies,

criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall obtain and maintain any requisite authority to sell the output of the Facility under applicable law.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms and the Confirmation. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Throughout the Term, Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The meter used by Buyer (or its Affiliate) for billing and revenue purposes shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in the Confirmation.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided

in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, is subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a sale or transfer of the Facility and the Governing Terms and Confirmation; or

(e) Assignment. The assignment of these Governing Terms by Seller, except as permitted in accordance with Article 12.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party or in connection with Seller's sale or transfer of its interest (or any part thereof) in the Facility.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in the Confirmation.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words “hereof” and “hereunder” shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer, in consultation with Seller, shall modify these Governing Terms and submit the modified document to the NHPUC for its review for conformity with RSA 362-H. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review for conformity with RSA 362-H .

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms and the Confirmation shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power
Production or Cogeneration Facility


General

Questions about completing this form should be sent to Form556@ferc.gov. Information about the Commission's QF program, answers to frequently asked questions about QF requirements or completing this form, and contact information for QF program staff are available at the Commission's QF website, www.ferc.gov/QF. The Commission's QF website also provides links to the Commission's QF regulations (18 C.F.R. § 131.80 and Part 292), as well as other statutes and orders pertaining to the Commission's QF program.

Who Must File

Any applicant seeking QF status or recertification of QF status for a generating facility with a net power production capacity (as determined in lines 7a through 7g below) greater than 1000 kW must file a self-certification or an application for Commission certification of QF status, which includes a properly completed Form 556. Any applicant seeking QF status for a generating facility with a net power production capacity 1000 kW or less is exempt from the certification requirement, and is therefore not required to complete or file a Form 556. See 18 C.F.R. § 292.203.

How to Complete the Form 556

This form is intended to be completed by responding to the items in the order they are presented, according to the instructions given. If you need to back-track, you may need to clear certain responses before you will be allowed to change other responses made previously in the form. If you experience problems, click on the nearest help button () for assistance, or contact Commission staff at Form556@ferc.gov.

Certain lines in this form will be automatically calculated based on responses to previous lines, with the relevant formulas shown. You must respond to all of the previous lines within a section before the results of an automatically calculated field will be displayed. If you disagree with the results of any automatic calculation on this form, contact Commission staff at Form556@ferc.gov to discuss the discrepancy before filing.

You must complete all lines in this form unless instructed otherwise. Do not alter this form or save this form in a different format. Incomplete or altered forms, or forms saved in formats other than PDF, will be rejected.

How to File a Completed Form 556

Applicants are required to file their Form 556 electronically through the Commission's eFiling website (see instructions on page 2). By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

If you are simultaneously filing both a waiver request and a Form 556 as part of an application for Commission certification, see the "Waiver Requests" section on page 3 for more information on how to file.

Paperwork Reduction Act Notice

This form is approved by the Office of Management and Budget (OMB Control No. 1902-0075, expiration 05/31/2013). Compliance with the information requirements established by the FERC Form No. 556 is required to obtain or maintain status as a QF. See 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The estimated burden for completing the FERC Form No. 556, including gathering and reporting information, is as follows: 3 hours for self-certification of a small power production facility, 8 hours for self-certifications of a cogeneration facility, 6 hours for an application for Commission certification of a small power production facility, and 50 hours for an application for Commission certification of a cogeneration facility. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Information Clearance Officer, Office of the Executive Director (ED-32), Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oir_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

Electronic Filing (eFiling)

To electronically file your Form 556, visit the Commission's QF website at www.ferc.gov/QF and click the eFiling link.

If you are eFiling your first document, you will need to register with your name, email address, mailing address, and phone number. If you are registering on behalf of an employer, then you will also need to provide the employer name, alternate contact name, alternate contact phone number and alternate contact email.

Once you are registered, log in to eFiling with your registered email address and the password that you created at registration. Follow the instructions. When prompted, select one of the following QF-related filing types, as appropriate, from the Electric or General filing category.

Filing category	Filing Type as listed in eFiling	Description
Electric	(Fee) Application for Commission Cert. as Cogeneration QF	Use to submit an application for Commission certification or Commission recertification of a cogeneration facility as a QF.
	(Fee) Application for Commission Cert. as Small Power QF	Use to submit an application for Commission certification or Commission recertification of a small power production facility as a QF.
	Self-Certification Notice (QF, EG, FC)	Use to submit a notice of self-certification of your facility (cogeneration or small power production) as a QF.
	Self-Recertification of Qualifying Facility (QF)	Use to submit a notice of self-recertification of your facility (cogeneration or small power production) as a QF.
	Supplemental Information or Request	Use to correct or supplement a Form 556 that was submitted with errors or omissions, or for which Commission staff has requested additional information. Do <i>not</i> use this filing type to report new changes to a facility or its ownership; rather, use a self-recertification or Commission recertification to report such changes.
General	(Fee) Petition for Declaratory Order (not under FPA Part 1)	Use to submit a petition for declaratory order granting a waiver of Commission QF regulations pursuant to 18 C.F.R. §§ 292.204(a) (3) and/or 292.205(c). A Form 556 is not required for a petition for declaratory order unless Commission recertification is being requested as part of the petition.

You will be prompted to submit your filing fee, if applicable, during the electronic submission process. Filing fees can be paid via electronic bank account debit or credit card.

During the eFiling process, you will be prompted to select your file(s) for upload from your computer.

Filing Fee

No filing fee is required if you are submitting a self-certification or self-recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(a).

A filing fee is required if you are filing either of the following:

- (1) an application for Commission certification or recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(b), or
- (2) a petition for declaratory order granting waiver pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c).

The current fees for applications for Commission certifications and petitions for declaratory order can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Fee Schedule link.

You will be prompted to submit your filing fee, if applicable, during the electronic filing process described on page 2.

Required Notice to Utilities and State Regulatory Authorities

Pursuant to 18 C.F.R. § 292.207(a)(ii), you must provide a copy of your self-certification or request for Commission certification to the utilities with which the facility will interconnect and/or transact, as well as to the State regulatory authorities of the states in which your facility and those utilities reside. Links to information about the regulatory authorities in various states can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Notice Requirements link.

What to Expect From the Commission After You File

An applicant filing a Form 556 electronically will receive an email message acknowledging receipt of the filing and showing the docket number assigned to the filing. Such email is typically sent within one business day, but may be delayed pending confirmation by the Secretary of the Commission of the contents of the filing.

An applicant submitting a self-certification of QF status should expect to receive no documents from the Commission, other than the electronic acknowledgement of receipt described above. Consistent with its name, a self-certification is a certification *by the applicant itself* that the facility meets the relevant requirements for QF status, and does not involve a determination by the Commission as to the status of the facility. An acknowledgement of receipt of a self-certification, in particular, does not represent a determination by the Commission with regard to the QF status of the facility. An applicant self-certifying may, however, receive a rejection, revocation or deficiency letter if its application is found, during periodic compliance reviews, not to comply with the relevant requirements.

An applicant submitting a request for Commission certification will receive an order either granting or denying certification of QF status, or a letter requesting additional information or rejecting the application. Pursuant to 18 C.F.R. § 292.207(b)(3), the Commission must act on an application for Commission certification within 90 days of the later of the filing date of the application or the filing date of a supplement, amendment or other change to the application.

Waiver Requests

18 C.F.R. § 292.204(a)(3) allows an applicant to request a waiver to modify the method of calculation pursuant to 18 C.F.R. § 292.204(a)(2) to determine if two facilities are considered to be located at the same site, for good cause. 18 C.F.R. § 292.205(c) allows an applicant to request waiver of the requirements of 18 C.F.R. §§ 292.205(a) and (b) for operating and efficiency upon a showing that the facility will produce significant energy savings. A request for waiver of these requirements must be submitted as a petition for declaratory order, with the appropriate filing fee for a petition for declaratory order. Applicants requesting Commission recertification as part of a request for waiver of one of these requirements should electronically submit their completed Form 556 along with their petition for declaratory order, rather than filing their Form 556 as a separate request for Commission recertification. Only the filing fee for the petition for declaratory order must be paid to cover both the waiver request and the request for recertification *if such requests are made simultaneously*.

18 C.F.R. § 292.203(d)(2) allows an applicant to request a waiver of the Form 556 filing requirements, for good cause. Applicants filing a petition for declaratory order requesting a waiver under 18 C.F.R. § 292.203(d)(2) do not need to complete or submit a Form 556 with their petition.

Geographic Coordinates

If a street address does not exist for your facility, then line 3c of the Form 556 requires you to report your facility's geographic coordinates (latitude and longitude). Geographic coordinates may be obtained from several different sources. You can find links to online services that show latitude and longitude coordinates on online maps by visiting the Commission's QF webpage at www.ferc.gov/QF and clicking the Geographic Coordinates link. You may also be able to obtain your geographic coordinates from a GPS device, Google Earth (available free at <http://earth.google.com>), a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

Filing Privileged Data or Critical Energy Infrastructure Information in a Form 556

The Commission's regulations provide procedures for applicants to either (1) request that any information submitted with a Form 556 be given privileged treatment because the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and should be withheld from public disclosure; or (2) identify any documents containing critical energy infrastructure information (CEII) as defined in 18 C.F.R. § 388.113 that should not be made public.

If you are seeking privileged treatment or CEII status for any data in your Form 556, then you must follow the procedures in 18 C.F.R. § 388.112. See www.ferc.gov/help/filing-guide/file-ceii.asp for more information.

Among other things (see 18 C.F.R. § 388.112 for other requirements), applicants seeking privileged treatment or CEII status for data submitted in a Form 556 must prepare and file both (1) a complete version of the Form 556 (containing the privileged and/or CEII data), and (2) a public version of the Form 556 (with the privileged and/or CEII data redacted). Applicants preparing and filing these different versions of their Form 556 must indicate below the security designation of this version of their document. If you are *not* seeking privileged treatment or CEII status for any of your Form 556 data, then you should not respond to any of the items on this page.

<p>Non-Public: Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This non-public version of the applicant's Form 556 contains all data, including the data that is redacted in the (separate) public version of the applicant's Form 556.</p>
<p>Public (redacted): Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This public version of the applicants's Form 556 contains all data <u>except</u> for data from the lines indicated below, which has been redacted.</p>
<p>Privileged: Indicate below which lines of your form contain data for which you are seeking privileged treatment</p>
<p>Critical Energy Infrastructure Information (CEII): Indicate below which lines of your form contain data for which you are seeking CEII status</p>

The eFiling process described on page 2 will allow you to identify which versions of the electronic documents you submit are public, privileged and/or CEII. The filenames for such documents should begin with "Public", "Priv", or "CEII", as applicable, to clearly indicate the security designation of the file. Both versions of the Form 556 should be unaltered PDF copies of the Form 556, as available for download from www.ferc.gov/QF. To redact data from the public copy of the submittal, simply omit the relevant data from the Form. For numerical fields, leave the redacted fields blank. For text fields, complete as much of the field as possible, and replace the redacted portions of the field with the word "REDACTED" in brackets. Be sure to identify above all fields which contain data for which you are seeking non-public status.

The Commission is not responsible for detecting or correcting filer errors, including those errors related to security designation. If your documents contain sensitive information, make sure they are filed using the proper security designation.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # 1902-0075
Expiration 5/31/2013

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power
Production or Cogeneration Facility

Application Information

1a Full name of applicant (legal entity on whose behalf qualifying facility status is sought for this facility) Bridgewater Power Company, L.P.		
1b Applicant street address Bridgewater Power Company, L.P. 67 Park Place East Morristown, NJ 07960		
1c City Morristown	1d State/province NJ	
1e Postal code 07960	1f Country (if not United States)	1g Telephone number 973-889-9100
1h Has the instant facility ever previously been certified as a QF? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
1i If yes, provide the docket number of the last known QF filing pertaining to this facility: QF <u>86</u> - <u>53</u> - <u>003</u>		
1j Under which certification process is the applicant making this filing? <input checked="" type="checkbox"/> Notice of self-certification (see note below) <input type="checkbox"/> Application for Commission certification (requires filing fee; see "Filing Fee" section on page 3) Note: a notice of self-certification is a notice by the applicant itself that its facility complies with the requirements for QF status. A notice of self-certification does not establish a proceeding, and the Commission does not review a notice of self-certification to verify compliance. See the "What to Expect From the Commission After You File" section on page 3 for more information.		
1k What type(s) of QF status is the applicant seeking for its facility? (check all that apply) <input checked="" type="checkbox"/> Qualifying small power production facility status <input type="checkbox"/> Qualifying cogeneration facility status		
1l What is the purpose and expected effective date(s) of this filing? <input type="checkbox"/> Original certification; facility expected to be installed by _____ and to begin operation on _____ <input checked="" type="checkbox"/> Change(s) to a previously certified facility to be effective on <u>1/30/15</u> (identify type(s) of change(s) below, and describe change(s) in the Miscellaneous section starting on page 19) <input checked="" type="checkbox"/> Name change and/or other administrative change(s) <input checked="" type="checkbox"/> Change in ownership <input type="checkbox"/> Change(s) affecting plant equipment, fuel use, power production capacity and/or cogeneration thermal output <input type="checkbox"/> Supplement or correction to a previous filing submitted on _____ (describe the supplement or correction in the Miscellaneous section starting on page 19)		
1m If any of the following three statements is true, check the box(es) that describe your situation and complete the form to the extent possible, explaining any special circumstances in the Miscellaneous section starting on page 19. <input type="checkbox"/> The instant facility complies with the Commission's QF requirements by virtue of a waiver of certain regulations previously granted by the Commission in an order dated _____ (specify any other relevant waiver orders in the Miscellaneous section starting on page 19) <input type="checkbox"/> The instant facility would comply with the Commission's QF requirements if a petition for waiver submitted concurrently with this application is granted <input type="checkbox"/> The instant facility complies with the Commission's regulations, but has special circumstances, such as the employment of unique or innovative technologies not contemplated by the structure of this form, that make the demonstration of compliance via this form difficult or impossible (describe in Misc. section starting on p. 19)		



Contact Information	2a Name of contact person Sean P. Lane		2b Telephone number 973-889-9100	
	2c Which of the following describes the contact person's relationship to the applicant? (check one) <input type="checkbox"/> Applicant (self) <input type="checkbox"/> Employee, owner or partner of applicant authorized to represent the applicant <input checked="" type="checkbox"/> Employee of a company affiliated with the applicant authorized to represent the applicant on this matter <input type="checkbox"/> Lawyer, consultant, or other representative authorized to represent the applicant on this matter			
	2d Company or organization name (if applicant is an individual, check here and skip to line 2e) <input type="checkbox"/> Bridgewater Power Company, L.P.			
	2e Street address (if same as Applicant, check here and skip to line 3a) <input checked="" type="checkbox"/>			
	2f City		2g State/province	
	2h Postal code		2i Country (if not United States)	
Facility Identification and Location	3a Facility name Bridgewater Power Company, L.P.			
	3b Street address (if a street address does not exist for the facility, check here and skip to line 3c) <input type="checkbox"/> 300 Route 3			
	3c Geographic coordinates: If you indicated that no street address exists for your facility by checking the box in line 3b, then you must specify the latitude and longitude coordinates of the facility in degrees (to three decimal places). Use the following formula to convert to decimal degrees from degrees, minutes and seconds: decimal degrees = degrees + (minutes/60) + (seconds/3600). See the "Geographic Coordinates" section on page 4 for help. If you provided a street address for your facility in line 3b, then specifying the geographic coordinates below is optional. Longitude <input type="checkbox"/> East (+) _____ degrees Latitude <input type="checkbox"/> North (+) _____ degrees <input type="checkbox"/> West (-) _____ degrees <input type="checkbox"/> South (-) _____ degrees			
	3d City (if unincorporated, check here and enter nearest city) <input type="checkbox"/> Bridgewater		3e State/province New Hampshire	
	3f County (or check here for independent city) <input type="checkbox"/> Grafton		3g Country (if not United States)	
Transacting Utilities	Identify the electric utilities that are contemplated to transact with the facility.			
	4a Identify utility interconnecting with the facility Public Service Company of New Hampshire			
	4b Identify utilities providing wheeling service or check here if none <input checked="" type="checkbox"/>			
	4c Identify utilities purchasing the useful electric power output or check here if none <input type="checkbox"/> Public Service Enterprise Group ("PSEG")			
	4d Identify utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service or check here if none <input type="checkbox"/> Public Service Company of New Hampshire			

Ownership and Operation

5a Direct ownership as of effective date or operation date: Identify all direct owners of the facility holding at least 10 percent equity interest. For each identified owner, also (1) indicate whether that owner is an electric utility, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or a holding company, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)), and (2) for owners which are electric utilities or holding companies, provide the percentage of equity interest in the facility held by that owner. If no direct owners hold at least 10 percent equity interest in the facility, then provide the required information for the two direct owners with the largest equity interest in the facility.

Full legal names of direct owners	Electric utility or holding company	If Yes, % equity interest
1) <u>Bridgewater Power Company, L.P.</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>100</u> %
2) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
3) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
4) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
5) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
6) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
7) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
8) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
9) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
10) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5b Upstream (i.e., indirect) ownership as of effective date or operation date: Identify all upstream (i.e., indirect) owners of the facility that both (1) hold at least 10 percent equity interest in the facility, and (2) are electric utilities, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or holding companies, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)). Also provide the percentage of equity interest in the facility held by such owners. (Note that, because upstream owners may be subsidiaries of one another, total percent equity interest reported may exceed 100 percent.)

Check here if no such upstream owners exist.

Full legal names of electric utility or holding company upstream owners	% equity interest
1) <u>Bridgewater Holdings, LLC</u>	<u>100</u> %
2) <u>Olympus Bridgewater Funding, LLC</u>	<u>100</u> %
3) <u>Olympus Renewables, LLC</u>	<u>75.8</u> %
4) <u>Olympus Power, LLC</u>	<u>100</u> %
5) _____	_____ %
6) _____	_____ %
7) _____	_____ %
8) _____	_____ %
9) _____	_____ %
10) _____	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5c Identify the facility operator

Bridgewater Power Company, L.P.



Energy Input

6a Describe the primary energy input: (check one main category and, if applicable, one subcategory)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Biomass (specify) | <input type="checkbox"/> Renewable resources (specify) | <input type="checkbox"/> Geothermal |
| <input type="checkbox"/> Landfill gas | <input type="checkbox"/> Hydro power - river | <input type="checkbox"/> Fossil fuel (specify) |
| <input type="checkbox"/> Manure digester gas | <input type="checkbox"/> Hydro power - tidal | <input type="checkbox"/> Coal (not waste) |
| <input type="checkbox"/> Municipal solid waste | <input type="checkbox"/> Hydro power - wave | <input type="checkbox"/> Fuel oil/diesel |
| <input type="checkbox"/> Sewage digester gas | <input type="checkbox"/> Solar - photovoltaic | <input type="checkbox"/> Natural gas (not waste) |
| <input checked="" type="checkbox"/> Wood | <input type="checkbox"/> Solar - thermal | <input type="checkbox"/> Other fossil fuel (describe on page 19) |
| <input type="checkbox"/> Other biomass (describe on page 19) | <input type="checkbox"/> Wind | |
| <input type="checkbox"/> Waste (specify type below in line 6b) | <input type="checkbox"/> Other renewable resource (describe on page 19) | <input type="checkbox"/> Other (describe on page 19) |

6b If you specified "waste" as the primary energy input in line 6a, indicate the type of waste fuel used: (check one)

- Waste fuel listed in 18 C.F.R. § 292.202(b) (specify one of the following)
- Anthracite culm produced prior to July 23, 1985
 - Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more
 - Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more
 - Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste
 - Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste
 - Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation
 - Gaseous fuels (except natural gas and synthetic gas from coal) (describe on page 19)
 - Waste natural gas from gas or oil wells (describe on page 19 how the gas meets the requirements of 18 C.F.R. § 2.400 for waste natural gas; include with your filing any materials necessary to demonstrate compliance with 18 C.F.R. § 2.400)
 - Materials that a government agency has certified for disposal by combustion (describe on page 19)
 - Heat from exothermic reactions (describe on page 19)
 - Residual heat (describe on page 19)
 - Used rubber tires
 - Plastic materials
 - Refinery off-gas
 - Petroleum coke
- Other waste energy input that has little or no commercial value and exists in the absence of the qualifying facility industry (describe in the Miscellaneous section starting on page 19; include a discussion of the fuel's lack of commercial value and existence in the absence of the qualifying facility industry)

6c Provide the average energy input, calculated on a calendar year basis, in terms of Btu/h for the following fossil fuel energy inputs, and provide the related percentage of the total average annual energy input to the facility (18 C.F.R. § 292.202(j)). For any oil or natural gas fuel, use lower heating value (18 C.F.R. § 292.202(m)).

Fuel	Annual average energy input for specified fuel	Percentage of total annual energy input
Natural gas	0 Btu/h	0 %
Oil-based fuels	3 Btu/h	1 %
Coal	0 Btu/h	0 %

Technical Facility Information

Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery by completing the worksheet below. Respond to all items. If any of the parasitic loads and/or losses identified in lines 7b through 7e are negligible, enter zero for those lines.

<p>7a The maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions</p>	<p>17,500 kW</p>
<p>7b Parasitic station power used at the facility to run equipment which is necessary and integral to the power production process (boiler feed pumps, fans/blowers, office or maintenance buildings directly related to the operation of the power generating facility, etc.). If this facility includes non-power production processes (for instance, power consumed by a cogeneration facility's thermal host) , do not include any power consumed by the non-power production activities in your reported parasitic station power.</p>	<p>1,500 kW</p>
<p>7c Electrical losses in interconnection transformers</p>	<p>0 kW</p>
<p>7d Electrical losses in AC/DC conversion equipment, if any</p>	<p>0 kW</p>
<p>7e Other interconnection losses in power lines or facilities (other than transformers and AC/DC conversion equipment) between the terminals of the generator(s) and the point of interconnection with the utility</p>	<p>0 kW</p>
<p>7f Total deductions from gross power production capacity = 7b + 7c + 7d + 7e</p>	<p>1,500.0 kW</p>
<p>7g Maximum net power production capacity = 7a - 7f</p>	<p>16,000.0 kW</p>

7h Description of facility and primary components: Describe the facility and its operation. Identify all boilers, heat recovery steam generators, prime movers (any mechanical equipment driving an electric generator), electrical generators, photovoltaic solar equipment, fuel cell equipment and/or other primary power generation equipment used in the facility. Descriptions of components should include (as applicable) specifications of the nominal capacities for mechanical output, electrical output, or steam generation of the identified equipment. For each piece of equipment identified, clearly indicate how many pieces of that type of equipment are included in the plant, and which components are normally operating or normally in standby mode. Provide a description of how the components operate as a system. Applicants for cogeneration facilities do not need to describe operations of systems that are clearly depicted on and easily understandable from a cogeneration facility's attached mass and heat balance diagram; however, such applicants should provide any necessary description needed to understand the sequential operation of the facility depicted in their mass and heat balance diagram. If additional space is needed, continue in the Miscellaneous section starting on page 19.

This facility is a biomass facility. The principle components of the facility include 163,000 lb/hr 690 psi and a 850 degree stream generating water tube boiler fueled by wood chips.



Information Required for Small Power Production Facility

If you indicated in line 1k that you are seeking qualifying small power production facility status for your facility, then you must respond to the items on this page. Otherwise, skip page 10.

Certification of Compliance with Size Limitations	Pursuant to 18 C.F.R. § 292.204(a), the power production capacity of any small power production facility, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts. To demonstrate compliance with this size limitation, or to demonstrate that your facility is exempt from this size limitation under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575, 104 Stat. 2834 (1990) <i>as amended by</i> Pub. L. 102-46, 105 Stat. 249 (1991)), respond to lines 8a through 8e below (as applicable).																
	8a Identify any facilities with electrical generating equipment located within 1 mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b, or their affiliates, holds at least a 5 percent equity interest. Check here if no such facilities exist. <input checked="" type="checkbox"/>																
	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%; text-align:center;">Facility location (city or county, state)</th> <th style="width:20%; text-align:center;">Root docket # (if any)</th> <th style="width:30%; text-align:center;">Common owner(s)</th> <th style="width:20%; text-align:center;">Maximum net power production capacity</th> </tr> </thead> <tbody> <tr> <td>1) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>2) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>3) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> </tbody> </table>	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity	1) _____	QF - _____	_____	kW	2) _____	QF - _____	_____	kW	3) _____	QF - _____	_____	kW
	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity													
	1) _____	QF - _____	_____	kW													
	2) _____	QF - _____	_____	kW													
3) _____	QF - _____	_____	kW														
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed																	
8b The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act) provides exemption from the size limitations in 18 C.F.R. § 292.204(a) for certain facilities that were certified prior to 1995. Are you seeking exemption from the size limitations in 18 C.F.R. § 292.204(a) by virtue of the Incentives Act? <input type="checkbox"/> Yes (continue at line 8c below) <input checked="" type="checkbox"/> No (skip lines 8c through 8e)																	
8c Was the original notice of self-certification or application for Commission certification of the facility filed on or before December 31, 1994? Yes <input type="checkbox"/> No <input type="checkbox"/>																	
8d Did construction of the facility commence on or before December 31, 1999? Yes <input type="checkbox"/> No <input type="checkbox"/>																	
8e If you answered No in line 8d, indicate whether reasonable diligence was exercised toward the completion of the facility, taking into account all factors relevant to construction? Yes <input type="checkbox"/> No <input type="checkbox"/> If you answered Yes, provide a brief narrative explanation in the Miscellaneous section starting on page 19 of the construction timeline (in particular, describe why construction started so long after the facility was certified) and the diligence exercised toward completion of the facility.																	
Certification of Compliance with Fuel Use Requirements	Pursuant to 18 C.F.R. § 292.204(b), qualifying small power production facilities may use fossil fuels, in minimal amounts, for only the following purposes: ignition; start-up; testing; flame stabilization; control use; alleviation or prevention of unanticipated equipment outages; and alleviation or prevention of emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. The amount of fossil fuels used for these purposes may not exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																
	9a Certification of compliance with 18 C.F.R. § 292.204(b) with respect to uses of fossil fuel: <input checked="" type="checkbox"/> Applicant certifies that the facility will use fossil fuels <i>exclusively</i> for the purposes listed above.																
	9b Certification of compliance with 18 C.F.R. § 292.204(b) with respect to amount of fossil fuel used annually: <input checked="" type="checkbox"/> Applicant certifies that the amount of fossil fuel used at the facility will not, in aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																

Information Required for Cogeneration Facility

If you indicated in line 1k that you are seeking qualifying cogeneration facility status for your facility, then you must respond to the items on pages 11 through 13. Otherwise, skip pages 11 through 13.

General Cogeneration Information	<p>Pursuant to 18 C.F.R. § 292.202(c), a cogeneration facility produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. Pursuant to 18 C.F.R. § 292.202(s), "sequential use" of energy means the following: (1) for a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard contained in 18 C.F.R. § 292.205(a); or (2) for a bottoming-cycle cogeneration facility, the use of at least some reject heat from a thermal application or process for power production.</p>	
	<p>10a What type(s) of cogeneration technology does the facility represent? (check all that apply)</p> <p style="text-align: center;"> <input type="checkbox"/> Topping-cycle cogeneration <input type="checkbox"/> Bottoming-cycle cogeneration </p>	
	<p>10b To help demonstrate the sequential operation of the cogeneration process, and to support compliance with other requirements such as the operating and efficiency standards, include with your filing a mass and heat balance diagram depicting average annual operating conditions. This diagram must include certain items and meet certain requirements, as described below. You must check next to the description of each requirement below to certify that you have complied with these requirements.</p>	
	<p>Check to certify compliance with indicated requirement</p>	<p>Requirement</p>
	<input type="checkbox"/>	Diagram must show orientation within system piping and/or ducts of all prime movers, heat recovery steam generators, boilers, electric generators, and condensers (as applicable), as well as any other primary equipment relevant to the cogeneration process.
	<input type="checkbox"/>	Any average annual values required to be reported in lines 10b, 12a, 13a, 13b, 13d, 13f, 14a, 15b, 15d and/or 15f must be computed over the anticipated hours of operation.
	<input type="checkbox"/>	Diagram must specify all fuel inputs by fuel type and average annual rate in Btu/h. Fuel for supplementary firing should be specified separately and clearly labeled. All specifications of fuel inputs should use lower heating values.
	<input type="checkbox"/>	Diagram must specify average gross electric output in kW or MW for each generator.
	<input type="checkbox"/>	Diagram must specify average mechanical output (that is, any mechanical energy taken off of the shaft of the prime movers for purposes not directly related to electric power generation) in horsepower, if any. Typically, a cogeneration facility has no mechanical output.
	<input type="checkbox"/>	At each point for which working fluid flow conditions are required to be specified (see below), such flow condition data must include mass flow rate (in lb/h or kg/s), temperature (in °F, R, °C or K), absolute pressure (in psia or kPa) and enthalpy (in Btu/lb or kJ/kg). Exception: For systems where the working fluid is <i>liquid only</i> (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid are clearly indicated on the diagram or in the Miscellaneous section starting on page 19, only mass flow rate and temperature (not pressure and enthalpy) need be specified. For reference, specific heat at standard conditions for pure liquid water is approximately 1.002 Btu/(lb*R) or 4.195 kJ/(kg*K).
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at input to and output from each steam turbine or other expansion turbine or back-pressure turbine.	
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at delivery to and return from each thermal application.	
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at make-up water inputs.	

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities

EPAct 2005 cogeneration facilities: The Energy Policy Act of 2005 (EPAct 2005) established a new section 210(n) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 824a-3(n), with additional requirements for any qualifying cogeneration facility that (1) is seeking to sell electric energy pursuant to section 210 of PURPA and (2) was either not a cogeneration facility on August 8, 2005, or had not filed a self-certification or application for Commission certification of QF status on or before February 1, 2006. These requirements were implemented by the Commission in 18 C.F.R. § 292.205(d). Complete the lines below, carefully following the instructions, to demonstrate whether these additional requirements apply to your cogeneration facility and, if so, whether your facility complies with such requirements.

11a Was your facility operating as a qualifying cogeneration facility on or before August 8, 2005? Yes No

11b Was the initial filing seeking certification of your facility (whether a notice of self-certification or an application for Commission certification) filed on or before February 1, 2006? Yes No

If the answer to either line 11a or 11b is Yes, then continue at line 11c below. Otherwise, if the answers to both lines 11a and 11b are No, skip to line 11e below.

11c With respect to the design and operation of the facility, have any changes been implemented on or after February 2, 2006 that affect general plant operation, affect use of thermal output, and/or increase net power production capacity from the plant's capacity on February 1, 2006?

Yes (continue at line 11d below)

No. Your facility is not subject to the requirements of 18 C.F.R. § 292.205(d) at this time. However, it may be subject to these requirements in the future if changes are made to the facility. At such time, the applicant would need to recertify the facility to determine eligibility. Skip lines 11d through 11j.

11d Does the applicant contend that the changes identified in line 11c are not so significant as to make the facility a "new" cogeneration facility that would be subject to the 18 C.F.R. § 292.205(d) cogeneration requirements?

Yes. Provide in the Miscellaneous section starting on page 19 a description of any relevant changes made to the facility (including the purpose of the changes) and a discussion of why the facility should not be considered a "new" cogeneration facility in light of these changes. Skip lines 11e through 11j.

No. Applicant stipulates to the fact that it is a "new" cogeneration facility (for purposes of determining the applicability of the requirements of 18 C.F.R. § 292.205(d)) by virtue of modifications to the facility that were initiated on or after February 2, 2006. Continue below at line 11e.

11e Will electric energy from the facility be sold pursuant to section 210 of PURPA?

Yes. The facility is an EPAct 2005 cogeneration facility. You must demonstrate compliance with 18 C.F.R. § 292.205(d)(2) by continuing at line 11f below.

No. Applicant certifies that energy will *not* be sold pursuant to section 210 of PURPA. Applicant also certifies its understanding that it must recertify its facility in order to determine compliance with the requirements of 18 C.F.R. § 292.205(d) *before* selling energy pursuant to section 210 of PURPA in the future. Skip lines 11f through 11j.

11f Is the net power production capacity of your cogeneration facility, as indicated in line 7g above, less than or equal to 5,000 kW?

Yes, the net power production capacity is less than or equal to 5,000 kW. 18 C.F.R. § 292.205(d)(4) provides a rebuttable presumption that cogeneration facilities of 5,000 kW and smaller capacity comply with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2). Applicant certifies its understanding that, should the power production capacity of the facility increase above 5,000 kW, then the facility must be recertified to (among other things) demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Skip lines 11g through 11j.

No, the net power production capacity is greater than 5,000 kW. Demonstrate compliance with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2) by continuing on the next page at line 11g.

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities (continued)

Lines 11g through 11k below guide the applicant through the process of demonstrating compliance with the requirements for "fundamental use" of the facility's energy output. 18 C.F.R. § 292.205(d)(2). Only respond to the lines on this page if the instructions on the previous page direct you to do so. Otherwise, skip this page.

18 C.F.R. § 292.205(d)(2) requires that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. If you were directed on the previous page to respond to the items on this page, then your facility is an EPAct 2005 cogeneration facility that is subject to this "fundamental use" requirement.

The Commission's regulations provide a two-pronged approach to demonstrating compliance with the requirements for fundamental use of the facility's energy output. First, the Commission has established in 18 C.F.R. § 292.205(d)(3) a "fundamental use test" that can be used to demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Under the fundamental use test, a facility is considered to comply with 18 C.F.R. § 292.205(d)(2) if at least 50 percent of the facility's total annual energy output (including electrical, thermal, chemical and mechanical energy output) is used for industrial, commercial, residential or institutional purposes.

Second, an applicant for a facility that does not pass the fundamental use test may provide a narrative explanation of and support for its contention that the facility nonetheless meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

Complete lines 11g through 11j below to determine compliance with the fundamental use test in 18 C.F.R. § 292.205(d)(3). Complete lines 11g through 11j *even if you do not intend to rely upon the fundamental use test to demonstrate compliance with 18 C.F.R. § 292.205(d)(2)*.

11g Amount of electrical, thermal, chemical and mechanical energy output (net of internal generation plant losses and parasitic loads) expected to be used annually for industrial, commercial, residential or institutional purposes and not sold to an electric utility	MWh
11h Total amount of electrical, thermal, chemical and mechanical energy expected to be sold to an electric utility	MWh
11i Percentage of total annual energy output expected to be used for industrial, commercial, residential or institutional purposes and not sold to a utility = 100 * 11g / (11g + 11h)	0 %

11j Is the response in line 11i greater than or equal to 50 percent?

Yes. Your facility complies with 18 C.F.R. § 292.205(d)(2) by virtue of passing the fundamental use test provided in 18 C.F.R. § 292.205(d)(3). Applicant certifies its understanding that, if it is to rely upon passing the fundamental use test as a basis for complying with 18 C.F.R. § 292.205(d)(2), then the facility must comply with the fundamental use test both in the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years.

No. Your facility does not pass the fundamental use test. Instead, you must provide in the Miscellaneous section starting on page 19 a narrative explanation of and support for why your facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility. Applicants providing a narrative explanation of why their facility should be found to comply with 18 C.F.R. § 292.205(d)(2) in spite of non-compliance with the fundamental use test may want to review paragraphs 47 through 61 of Order No. 671 (accessible from the Commission's QF website at www.ferc.gov/QF), which provide discussion of the facts and circumstances that may support their explanation. Applicant should also note that the percentage reported above will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years. See Order No. 671 at paragraph 51. As such, the applicant should make sure that it reports appropriate values on lines 11g and 11h above to serve as the relevant annual standard, taking into account expected variations in production conditions.

Information Required for Topping-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents topping-cycle cogeneration technology, then you must respond to the items on pages 14 and 15. Otherwise, skip pages 14 and 15.

Usefulness of Topping-Cycle Thermal Output	<p>The thermal energy output of a topping-cycle cogeneration facility is the net energy made available to an industrial or commercial process or used in a heating or cooling application. Pursuant to sections 292.202(c), (d) and (h) of the Commission's regulations (18 C.F.R. §§ 292.202(c), (d) and (h)), the thermal energy output of a qualifying topping-cycle cogeneration facility must be useful. In connection with this requirement, describe the thermal output of the topping-cycle cogeneration facility by responding to lines 12a and 12b below.</p>		
	<p>12a Identify and describe each thermal host, and specify the annual average rate of thermal output made available to each host for each use. For hosts with multiple uses of thermal output, provide the data for each use <i>in separate rows</i>.</p>		
	Name of entity (thermal host) taking thermal output	Thermal host's relationship to facility; Thermal host's use of thermal output	Average annual rate of thermal output attributable to use (net of heat contained in process return or make-up water)
	1)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	2)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	3)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	4)	Select thermal host's relationship to facility	Btu/h
	Select thermal host's use of thermal output		
5)	Select thermal host's relationship to facility	Btu/h	
	Select thermal host's use of thermal output		
6)	Select thermal host's relationship to facility	Btu/h	
	Select thermal host's use of thermal output		
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed			
<p>12b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each use of the thermal output identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's use of thermal output is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific use of thermal output related to the instant facility, then you need only provide a brief description of that use and a reference by date and docket number to the order certifying your facility with the indicated use. Such exemption may not be used if any change creates a material deviation from the previously authorized use.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			



Topping-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing topping-cycle technology must demonstrate compliance with the topping-cycle operating standard and, if applicable, efficiency standard. Section 292.205(a)(1) of the Commission's regulations (18 C.F.R. § 292.205(a)(1)) establishes the operating standard for topping-cycle cogeneration facilities: the useful thermal energy output must be no less than 5 percent of the total energy output. Section 292.205(a)(2) (18 C.F.R. § 292.205(a)(2)) establishes the efficiency standard for topping-cycle cogeneration facilities for which installation commenced on or after March 13, 1980: the useful power output of the facility plus one-half the useful thermal energy output must (A) be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; and (B) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility. To demonstrate compliance with the topping-cycle operating and/or efficiency standards, or to demonstrate that your facility is exempt from the efficiency standard based on the date that installation commenced, respond to lines 13a through 13l below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 13a through 13l below considering only the energy inputs and outputs attributable to the topping-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion (topping or bottoming) of the cogeneration system.

13a Indicate the annual average rate of useful thermal energy output made available to the host(s), net of any heat contained in condensate return or make-up water	Btu/h
13b Indicate the annual average rate of net electrical energy output	kW
13c Multiply line 13b by 3,412 to convert from kW to Btu/h	0 Btu/h
13d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
13e Multiply line 13d by 2,544 to convert from hp to Btu/h	0 Btu/h
13f Indicate the annual average rate of energy input from natural gas and oil	Btu/h
13g Topping-cycle operating value = $100 * 13a / (13a + 13c + 13e)$	0 %
13h Topping-cycle efficiency value = $100 * (0.5*13a + 13c + 13e) / 13f$	0 %
13i Compliance with operating standard: Is the operating value shown in line 13g greater than or equal to 5%? <input type="checkbox"/> Yes (complies with operating standard) <input type="checkbox"/> No (does not comply with operating standard)	
13j Did installation of the facility in its current form commence on or after March 13, 1980? <input type="checkbox"/> Yes. Your facility is subject to the efficiency requirements of 18 C.F.R. § 292.205(a)(2). Demonstrate compliance with the efficiency requirement by responding to line 13k or 13l, as applicable, below. <input type="checkbox"/> No. Your facility is exempt from the efficiency standard. Skip lines 13k and 13l.	
13k Compliance with efficiency standard (for low operating value): If the operating value shown in line 13g is less than 15%, then indicate below whether the efficiency value shown in line 13h greater than or equal to 45%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	
13l Compliance with efficiency standard (for high operating value): If the operating value shown in line 13g is greater than or equal to 15%, then indicate below whether the efficiency value shown in line 13h is greater than or equal to 42.5%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	



Information Required for Bottoming-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents bottoming-cycle cogeneration technology, then you must respond to the items on pages 16 and 17. Otherwise, skip pages 16 and 17.



Usefulness of Bottoming-Cycle Thermal Output	<p>The thermal energy output of a bottoming-cycle cogeneration facility is the energy related to the process(es) from which at least some of the reject heat is then used for power production. Pursuant to sections 292.202(c) and (e) of the Commission's regulations (18 C.F.R. § 292.202(c) and (e)), the thermal energy output of a qualifying bottoming-cycle cogeneration facility must be useful. In connection with this requirement, describe the process(es) from which at least some of the reject heat is used for power production by responding to lines 14a and 14b below.</p>		
	<p>14a Identify and describe each thermal host and each bottoming-cycle cogeneration process engaged in by each host. For hosts with multiple bottoming-cycle cogeneration processes, provide the data for each process <i>in separate rows</i>.</p>		
	Name of entity (thermal host) performing the process from which at least some of the reject heat is used for power production	Thermal host's relationship to facility; Thermal host's process type	Has the energy input to the thermal host been augmented for purposes of increasing power production capacity? (if Yes, describe on p. 19)
	1)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	2)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	3)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
<p><input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed</p>			
<p>14b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each process identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's process is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific bottoming-cycle process related to the instant facility, then you need only provide a brief description of that process and a reference by date and docket number to the order certifying your facility with the indicated process. Such exemption may not be used if any material changes to the process have been made.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			

Bottoming-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing bottoming-cycle technology and for which installation commenced on or after March 13, 1990 must demonstrate compliance with the bottoming-cycle efficiency standards. Section 292.205(b) of the Commission's regulations (18 C.F.R. § 292.205(b)) establishes the efficiency standard for bottoming-cycle cogeneration facilities: the useful power output of the facility must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing. To demonstrate compliance with the bottoming-cycle efficiency standard (if applicable), or to demonstrate that your facility is exempt from this standard based on the date that installation of the facility began, respond to lines 15a through 15h below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 15a through 15h below considering only the energy inputs and outputs attributable to the bottoming-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion of the cogeneration system (topping or bottoming).

15a Did installation of the facility in its current form commence on or after March 13, 1980?

Yes. Your facility is subject to the efficiency requirement of 18 C.F.R. § 292.205(b). Demonstrate compliance with the efficiency requirement by responding to lines 15b through 15h below.

No. Your facility is exempt from the efficiency standard. Skip the rest of page 17.

15b Indicate the annual average rate of net electrical energy output	kW
15c Multiply line 15b by 3,412 to convert from kW to Btu/h	0 Btu/h
15d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
15e Multiply line 15d by 2,544 to convert from hp to Btu/h	0 Btu/h
15f Indicate the annual average rate of supplementary energy input from natural gas or oil	Btu/h
15g Bottoming-cycle efficiency value = $100 * (15c + 15e) / 15f$	0 %

15h Compliance with efficiency standard: Indicate below whether the efficiency value shown in line 15g is greater than or equal to 45%:

Yes (complies with efficiency standard) No (does not comply with efficiency standard)



Miscellaneous

Use this space to provide any information for which there was not sufficient space in the previous sections of the form to provide. For each such item of information *clearly identify the line number that the information belongs to*. You may also use this space to provide any additional information you believe is relevant to the certification of your facility.

Your response below is not limited to one page. Additional page(s) will automatically be inserted into this form if the length of your response exceeds the space on this page. Use as many pages as you require.

Continued from Section 1L and 4c:

Administrative change to reflect that output is currently contracted with PSEG.

Continued from Section 1L and 5b:

This Self-Recertification reflects a change in ownership. January 30, 2015, Olympus Bridgewater Funding, LLC acquired all of the passive Class B interests in Bridgewater Holdings, LLC ("Bridgewater Holdings") which had been held by PSEG New Hampshire, Inc. The Class A, managing member interests continue to be held by Olympus Bridgewater Funding, LLC.

State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that BRIDGEWATER POWER COMPANY, L.P. a New Hampshire Limited Partnership formed to transact business in New Hampshire on August 22, 1986. I further certify that it has paid the fees required by law and has not dissolved.

Business ID: **102411**

Certificate Number: **0004210442**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of November A.D. 2018.

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

ATTACHMENT B, III
Response from Hemphill

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

Tenacity. Creativity. Results.™

Timothy J. McLaughlin
Attorney at Law

November 16, 2018

Via e-mail only: **robert.bersak@eversource.com**
 rick.white@eversource.com
 david.errichetti@eversource.com

Eversource Energy
Attn: Robert Bersak, Frederick White and David Errichetti
107 Selden Street
Berlin, CT 06037

P.O. Box 270
Hartford CT 06141

Re: Springfield Power, LLC

Dear Messrs. Bersak, White and Errichetti,

In accordance with the provisions of RSA 362-H, and in response to Public Service Company of New Hampshire d/b/a Eversource's ("Eversource") November 6, 2018 solicitation letter, Shaheen & Gordon, P.A. submits the following proposal on behalf of Springfield Power, LLC:

- Response to Questions;
- Draft Confirmation;
- Governing Terms Proposal;
- QF Certification; and
- Secretary of State Certificate.

As you know, RSA 362-H creates a 3-step process under which Eversource must offer to purchase the net energy output of eligible facilities: (1) solicitations of proposals from eligible facilities by Eversource; (2) proposals by eligible facilities; and (3) submission to the PUC of eligible facility proposals that conform with the statute.

In accord with the statute, Eversource was required to solicit proposals from eligible facilities that informed "eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation." The

statute further requires that the solicitation provide certain information concerning pricing and other statutorily required information.

In response to the solicitation, an eligible facility is to submit a proposal and “a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.”

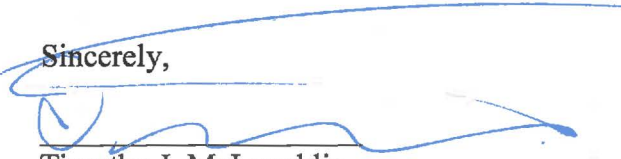
Eversource is then to “select all proposals from eligible facilities that conform to the requirements of this section.” These proposals are then submitted to the PUC as part of Eversource’s “submission for periodic approval of its residential electric customer default service supply solicitation.”

We engage in this brief statutory review because Eversource’s solicitation contains requirements, terms and conditions that are extraneous, in conflict with the statute, and contrary to the statute’s purpose and intention.

Without waiving any rights, in the eligible facility proposal we have accepted certain of the terms and conditions from your November 6, 2018 solicitation. The eligible facility proposal submitted hereby conforms with the statute. If you claim that the proposal does not conform with the statute, please let us know with specificity the reasons for your assertion of non-compliance by November 22, 2018. If there is no claim of non-compliance, then we expect Eversource will submit the proposal to the PUC in accordance with the statute, and we similarly expect to be so notified thereof by November 22, 2018.

Finally, if you do not intend to submit the proposal to the PUC as required by statute, then we shall do so.

Sincerely,



Timothy J. McLaughlin
tmclaughlin@shaheengordon.com

TJM/jpk

cc: Springfield Power, LLC

Encl.: Response to Questions
Draft Confirmation
Governing Terms Proposal
QF Certification
Secretary of State Certificate

Springfield Power LLC (Seller) Response to PSNH RSA 362-H Offer To Purchase Net Energy Output

1. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.

A: Seller confirms that the Facility is an “Eligible Facility” as defined in RSA 362-H:1, V(a) given that the Facility: (i) produces electricity for sale by the use of biomass fuel as its primary energy source, (ii) has a power production capacity not greater than 25 megawatts excluding station service, (iii) is interconnected with an electric distribution or transmission system located in New Hampshire, and (iv) began operation prior to January 1, 2006.

2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.

A: The requested information is not required pursuant to RSA 362-H. However, Seller confirms that it currently has such authority as a QF (attached), but is separately seeking market-based rate authority under Section 205 of the Federal Power Act.

3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.

A: See attached

4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.

A: RSA 362-H:2, II provides:

II. Each eligible facility’s proposal in response to such solicitation shall provide a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

A: During the Term, as defined in the Confirmation, Seller anticipates hourly operation each month in a range of 12.5-16.5 MW with a potential high hourly operation at 17.25

MW. Resulting net monthly generation should be between 10,500-11,600 MWh, except during May 2019, where a scheduled outage will bring net generation to approximately 9,000 MWhs for that month.

5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

A: Attached is Seller's proposed executed draft Confirmation in conformity with RSA 362-H.

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW OF THIS CONFIRMATION AND ITS ATTACHMENT A AS BEING IN CONFORMITY WITH RSA 362-H.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by Springfield Power, LLC (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction arises from RSA 362-H and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362- H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned the terms herein and in Attachment A and an order from the NHPUC reviewing this Confirmation and its Attachment A and finding that they are in conformity with RSA 362-H.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: **Springfield Power, LLC**
Legal Name

54 Fisher Corner Road, Springfield, NH 03284
Address

603-763-4757
Telephone

Limited Liability Corporation-DE
Entity Type and State of Formation

Eligible Facility: Seller's 17.5 MW biomass fired generating facility which is located in Springfield, New Hampshire, identified in the ISO-NE market settlement system with the Asset name Hemphill 1 and ID # 436.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final NHPUC Determination that this Confirmation and its Attachment A are in conformity with RSA 362-H or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

For the Delivery Period, PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I, which will be either: (i) 80% of the difference between the competitively determined default energy rate, and the rate component for compliance with RSA 362-F, if included in the default energy rate, or (ii) 80% of the competitively determined default energy rate if the rate component for compliance with RSA 362-F is not included in the default energy rate.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer (other than Buyer's reluctance to pay the adjusted energy rate for this energy), Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by designating PSNH, ID 50094, the Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue that PSNH receives from ISO-NE shall be credited to Seller by the 21st day of the next month.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset

and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures. [PSNH need to explain how this clause conforms with previous clause requesting that PSNH be Asset Owner for ISO-NE billing and settlement purposes.]

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- An order of the NHPUC reviewing this Confirmation and its Attachment A and finding them to be in conformity with RSA 362-H,
- PSNH's requirement to comply with the terms of RSA 362-H arise solely from RSA 362-H.
- The Facility shall maintain its status as an "Eligible facility" per RSA 362-H throughout such Term.

Cost Recovery:

As provided in RSA 362-H:2, V PSNH is eligible to recover the Transaction's difference between its energy purchase costs and the market clearing price through a nonbypassable delivery services charge applicable to all customer's in PSNH's service territory. The charge may include reasonable costs incurred by PSNH, and the charges shall be allocated using the customer class allocation percentages approved in NHPUC docket DE 14-238, order 25,920.

Definitions:

"Day-Ahead Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Real-Time Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Market Energy Clearing Price" means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real-time energy market, respectively.

"Unit Contingent" means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

"NHPUC Order" means receipt of a final, decision from the New Hampshire Public Utilities Commission, stating that it has reviewed this Confirmation and its Attachment A and finds they are in conformity with RSA 362-H.

"Delivered Energy" is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
HEMPHILL	436	Springfield Power, LLC	UN.NORTH_RD34.5HEMP

Governing Terms: All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices: Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:
 Frederick White
 860-665-5272 (phone)
 860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:
 David Errichetti
 860-665-4519 (phone)
 860-665-4583 (fax)
david.errichetti@eversource.com

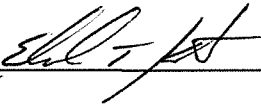
If to Seller:

Primary Contact:
 Edward Kent (name)
 856-206-0930 (phone)
 N/A (fax)
Kent-e@ewprc.com (email)

Secondary Contact:
 Sean Pak (name)
 856-206-0930 (phone)
 N/A (fax)
Pak-s@ewprc.com (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for the commission's review of this Confirmation and its Attachment A for conformity with RSA 362-H.

SPRINGFIELD POWER, LLC



BY _____
Name: *EDWARD KENT*
Title: *PRESIDENT*
Date *11/15/2018*

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntary act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the facility owned by Seller as set forth in the Confirmation (the “Facility”).

PSNH’s performance hereunder is expressly subject to and conditioned upon the terms herein and in the Confirmation and an order from the New Hampshire Public Utilities Commission (“NHPUC”) reviewing the Confirmation and Governing Terms and finding that provisions addressed by RSA 362-H and contained herein are in conformity with RSA 362-H.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the point of interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in the Confirmation.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time at the Buyer’s meter used for billing and revenue determination.

“Energy Price” shall have the meaning as set forth in the Confirmation.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in the Confirmation.

“FERC” shall mean the United States Federal Energy Regulatory Commission and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean any practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility, or between Seller, the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall mean the point of interconnection set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“**Law**” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“**Locational Marginal Price**” or “LMP” shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Participants Agreement**” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**New England Control Area**” shall have the meaning as set forth in the ISO-NE Tariff.

“**Party**” and “**Parties**” shall mean the Buyer as defined herein and/or Seller, as defined in the Confirmation.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on the Confirmation.

“**Products**” shall mean Energy only.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s order reviewing the Governing Terms and the Confirmation and finding that they are in conformity with RSA 362-H, provided that such order does not include any conditions or modifications that are inconsistent with RSA 362-H.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in the Confirmation.

“Term” shall have the meaning set forth in the Confirmation.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in the Confirmation.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy, and as further defined in the Confirmation.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in the Confirmation.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC (if applicable) and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage required under the Facility's existing Interconnection Agreement and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of the initial sale under the Confirmation, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies,

criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall obtain and maintain any requisite authority to sell the output of the Facility under applicable law.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms and the Confirmation. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Throughout the Term, Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The meter used by Buyer (or its Affiliate) for billing and revenue purposes shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in the Confirmation.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided

in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, is subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a sale or transfer of the Facility and the Governing Terms and Confirmation; or

(e) Assignment. The assignment of these Governing Terms by Seller, except as permitted in accordance with Article 12.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party or in connection with Seller's sale or transfer of its interest (or any part thereof) in the Facility.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in the Confirmation.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words “hereof” and “hereunder” shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer, in consultation with Seller, shall modify these Governing Terms and submit the modified document to the NHPUC for its review for conformity with RSA 362-H. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review for conformity with RSA 362-H .

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms and the Confirmation shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power
Production or Cogeneration Facility


General

Questions about completing this form should be sent to Form556@ferc.gov. Information about the Commission's QF program, answers to frequently asked questions about QF requirements or completing this form, and contact information for QF program staff are available at the Commission's QF website, www.ferc.gov/QF. The Commission's QF website also provides links to the Commission's QF regulations (18 C.F.R. § 131.80 and Part 292), as well as other statutes and orders pertaining to the Commission's QF program.

Who Must File

Any applicant seeking QF status or recertification of QF status for a generating facility with a net power production capacity (as determined in lines 7a through 7g below) greater than 1000 kW must file a self-certification or an application for Commission certification of QF status, which includes a properly completed Form 556. Any applicant seeking QF status for a generating facility with a net power production capacity 1000 kW or less is exempt from the certification requirement, and is therefore not required to complete or file a Form 556. See 18 C.F.R. § 292.203.

How to Complete the Form 556

This form is intended to be completed by responding to the items in the order they are presented, according to the instructions given. If you need to back-track, you may need to clear certain responses before you will be allowed to change other responses made previously in the form. If you experience problems, click on the nearest help button () for assistance, or contact Commission staff at Form556@ferc.gov.

Certain lines in this form will be automatically calculated based on responses to previous lines, with the relevant formulas shown. You must respond to all of the previous lines within a section before the results of an automatically calculated field will be displayed. If you disagree with the results of any automatic calculation on this form, contact Commission staff at Form556@ferc.gov to discuss the discrepancy before filing.

You must complete all lines in this form unless instructed otherwise. Do not alter this form or save this form in a different format. Incomplete or altered forms, or forms saved in formats other than PDF, will be rejected.

How to File a Completed Form 556

Applicants are required to file their Form 556 electronically through the Commission's eFiling website (see instructions on page 2). By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

If you are simultaneously filing both a waiver request and a Form 556 as part of an application for Commission certification, see the "Waiver Requests" section on page 3 for more information on how to file.

Paperwork Reduction Act Notice

This form is approved by the Office of Management and Budget (OMB Control No. 1902-0075, expiration 05/31/2013). Compliance with the information requirements established by the FERC Form No. 556 is required to obtain or maintain status as a QF. See 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The estimated burden for completing the FERC Form No. 556, including gathering and reporting information, is as follows: 3 hours for self-certification of a small power production facility, 8 hours for self-certifications of a cogeneration facility, 6 hours for an application for Commission certification of a small power production facility, and 50 hours for an application for Commission certification of a cogeneration facility. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Information Clearance Officer, Office of the Executive Director (ED-32), Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oir_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

Electronic Filing (eFiling)

To electronically file your Form 556, visit the Commission's QF website at www.ferc.gov/QF and click the eFiling link.

If you are eFiling your first document, you will need to register with your name, email address, mailing address, and phone number. If you are registering on behalf of an employer, then you will also need to provide the employer name, alternate contact name, alternate contact phone number and and alternate contact email.

Once you are registered, log in to eFiling with your registered email address and the password that you created at registration. Follow the instructions. When prompted, select one of the following QF-related filing types, as appropriate, from the Electric or General filing category.

Filing category	Filing Type as listed in eFiling	Description
Electric	(Fee) Application for Commission Cert. as Cogeneration QF	Use to submit an application for Commission certification or Commission recertification of a cogeneration facility as a QF.
	(Fee) Application for Commission Cert. as Small Power QF	Use to submit an application for Commission certification or Commission recertification of a small power production facility as a QF.
	Self-Certification Notice (QF, EG, FC)	Use to submit a notice of self-certification of your facility (cogeneration or small power production) as a QF.
	Self-Recertification of Qualifying Facility (QF)	Use to submit a notice of self-recertification of your facility (cogeneration or small power production) as a QF.
	Supplemental Information or Request	Use to correct or supplement a Form 556 that was submitted with errors or omissions, or for which Commission staff has requested additional information. Do <i>not</i> use this filing type to report new changes to a facility or its ownership; rather, use a self-recertification or Commission recertification to report such changes.
General	(Fee) Petition for Declaratory Order (not under FPA Part 1)	Use to submit a petition for declaratory order granting a waiver of Commission QF regulations pursuant to 18 C.F.R. §§ 292.204(a) (3) and/or 292.205(c). A Form 556 is not required for a petition for declaratory order unless Commission recertification is being requested as part of the petition.

You will be prompted to submit your filing fee, if applicable, during the electronic submission process. Filing fees can be paid via electronic bank account debit or credit card.

During the eFiling process, you will be prompted to select your file(s) for upload from your computer.

Filing Fee

No filing fee is required if you are submitting a self-certification or self-recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(a).

A filing fee is required if you are filing either of the following:

- (1) an application for Commission certification or recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(b), or
- (2) a petition for declaratory order granting waiver pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c).

The current fees for applications for Commission certifications and petitions for declaratory order can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Fee Schedule link.

You will be prompted to submit your filing fee, if applicable, during the electronic filing process described on page 2.

Required Notice to Utilities and State Regulatory Authorities

Pursuant to 18 C.F.R. § 292.207(a)(ii), you must provide a copy of your self-certification or request for Commission certification to the utilities with which the facility will interconnect and/or transact, as well as to the State regulatory authorities of the states in which your facility and those utilities reside. Links to information about the regulatory authorities in various states can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Notice Requirements link.

What to Expect From the Commission After You File

An applicant filing a Form 556 electronically will receive an email message acknowledging receipt of the filing and showing the docket number assigned to the filing. Such email is typically sent within one business day, but may be delayed pending confirmation by the Secretary of the Commission of the contents of the filing.

An applicant submitting a self-certification of QF status should expect to receive no documents from the Commission, other than the electronic acknowledgement of receipt described above. Consistent with its name, a self-certification is a certification *by the applicant itself* that the facility meets the relevant requirements for QF status, and does not involve a determination by the Commission as to the status of the facility. An acknowledgement of receipt of a self-certification, in particular, does not represent a determination by the Commission with regard to the QF status of the facility. An applicant self-certifying may, however, receive a rejection, revocation or deficiency letter if its application is found, during periodic compliance reviews, not to comply with the relevant requirements.

An applicant submitting a request for Commission certification will receive an order either granting or denying certification of QF status, or a letter requesting additional information or rejecting the application. Pursuant to 18 C.F.R. § 292.207(b)(3), the Commission must act on an application for Commission certification within 90 days of the later of the filing date of the application or the filing date of a supplement, amendment or other change to the application.

Waiver Requests

18 C.F.R. § 292.204(a)(3) allows an applicant to request a waiver to modify the method of calculation pursuant to 18 C.F.R. § 292.204(a)(2) to determine if two facilities are considered to be located at the same site, for good cause. 18 C.F.R. § 292.205(c) allows an applicant to request waiver of the requirements of 18 C.F.R. §§ 292.205(a) and (b) for operating and efficiency upon a showing that the facility will produce significant energy savings. A request for waiver of these requirements must be submitted as a petition for declaratory order, with the appropriate filing fee for a petition for declaratory order. Applicants requesting Commission recertification as part of a request for waiver of one of these requirements should electronically submit their completed Form 556 along with their petition for declaratory order, rather than filing their Form 556 as a separate request for Commission recertification. Only the filing fee for the petition for declaratory order must be paid to cover both the waiver request and the request for recertification *if such requests are made simultaneously*.

18 C.F.R. § 292.203(d)(2) allows an applicant to request a waiver of the Form 556 filing requirements, for good cause. Applicants filing a petition for declaratory order requesting a waiver under 18 C.F.R. § 292.203(d)(2) do not need to complete or submit a Form 556 with their petition.

Geographic Coordinates

If a street address does not exist for your facility, then line 3c of the Form 556 requires you to report your facility's geographic coordinates (latitude and longitude). Geographic coordinates may be obtained from several different sources. You can find links to online services that show latitude and longitude coordinates on online maps by visiting the Commission's QF webpage at www.ferc.gov/QF and clicking the Geographic Coordinates link. You may also be able to obtain your geographic coordinates from a GPS device, Google Earth (available free at <http://earth.google.com>), a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

Filing Privileged Data or Critical Energy Infrastructure Information in a Form 556

The Commission's regulations provide procedures for applicants to either (1) request that any information submitted with a Form 556 be given privileged treatment because the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and should be withheld from public disclosure; or (2) identify any documents containing critical energy infrastructure information (CEII) as defined in 18 C.F.R. § 388.113 that should not be made public.

If you are seeking privileged treatment or CEII status for any data in your Form 556, then you must follow the procedures in 18 C.F.R. § 388.112. See www.ferc.gov/help/filing-guide/file-ceii.asp for more information.

Among other things (see 18 C.F.R. § 388.112 for other requirements), applicants seeking privileged treatment or CEII status for data submitted in a Form 556 must prepare and file both (1) a complete version of the Form 556 (containing the privileged and/or CEII data), and (2) a public version of the Form 556 (with the privileged and/or CEII data redacted). Applicants preparing and filing these different versions of their Form 556 must indicate below the security designation of this version of their document. If you are *not* seeking privileged treatment or CEII status for any of your Form 556 data, then you should not respond to any of the items on this page.

<p>Non-Public: Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This non-public version of the applicant's Form 556 contains all data, including the data that is redacted in the (separate) public version of the applicant's Form 556.</p>
<p>Public (redacted): Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This public version of the applicants's Form 556 contains all data <u>except</u> for data from the lines indicated below, which has been redacted.</p>
<p>Privileged: Indicate below which lines of your form contain data for which you are seeking privileged treatment</p>
<p>Critical Energy Infrastructure Information (CEII): Indicate below which lines of your form contain data for which you are seeking CEII status</p>

The eFiling process described on page 2 will allow you to identify which versions of the electronic documents you submit are public, privileged and/or CEII. The filenames for such documents should begin with "Public", "Priv", or "CEII", as applicable, to clearly indicate the security designation of the file. Both versions of the Form 556 should be unaltered PDF copies of the Form 556, as available for download from www.ferc.gov/QF. To redact data from the public copy of the submittal, simply omit the relevant data from the Form. For numerical fields, leave the redacted fields blank. For text fields, complete as much of the field as possible, and replace the redacted portions of the field with the word "REDACTED" in brackets. Be sure to identify above all fields which contain data for which you are seeking non-public status.

The Commission is not responsible for detecting or correcting filer errors, including those errors related to security designation. If your documents contain sensitive information, make sure they are filed using the proper security designation.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # 1902-0075
Expiration 5/31/2013

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

Application Information

1a Full name of applicant (legal entity on whose behalf qualifying facility status is sought for this facility) Springfield Power, LLC		
1b Applicant street address 600 West Broadway Suite 1600		
1c City San Diego	1d State/province CA	
1e Postal code 92101	1f Country (if not United States)	1g Telephone number (619) 232-6564
1h Has the instant facility ever previously been certified as a QF? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
1i If yes, provide the docket number of the last known QF filing pertaining to this facility: QF <u>84</u> - <u>423</u> - <u>005</u>		
1j Under which certification process is the applicant making this filing? <input checked="" type="checkbox"/> Notice of self-certification (see note below) <input type="checkbox"/> Application for Commission certification (requires filing fee; see "Filing Fee" section on page 3) Note: a notice of self-certification is a notice by the applicant itself that its facility complies with the requirements for QF status. A notice of self-certification does not establish a proceeding, and the Commission does not review a notice of self-certification to verify compliance. See the "What to Expect From the Commission After You File" section on page 3 for more information.		
1k What type(s) of QF status is the applicant seeking for its facility? (check all that apply) <input checked="" type="checkbox"/> Qualifying small power production facility status <input type="checkbox"/> Qualifying cogeneration facility status		
1l What is the purpose and expected effective date(s) of this filing? <input type="checkbox"/> Original certification; facility expected to be installed by _____ and to begin operation on _____ <input checked="" type="checkbox"/> Change(s) to a previously certified facility to be effective on <u>2/1/12</u> (identify type(s) of change(s) below, and describe change(s) in the Miscellaneous section starting on page 19) <input type="checkbox"/> Name change and/or other administrative change(s) <input checked="" type="checkbox"/> Change in ownership <input type="checkbox"/> Change(s) affecting plant equipment, fuel use, power production capacity and/or cogeneration thermal output <input type="checkbox"/> Supplement or correction to a previous filing submitted on _____ (describe the supplement or correction in the Miscellaneous section starting on page 19)		
1m If any of the following three statements is true, check the box(es) that describe your situation and complete the form to the extent possible, explaining any special circumstances in the Miscellaneous section starting on page 19. <input type="checkbox"/> The instant facility complies with the Commission's QF requirements by virtue of a waiver of certain regulations previously granted by the Commission in an order dated _____ (specify any other relevant waiver orders in the Miscellaneous section starting on page 19) <input type="checkbox"/> The instant facility would comply with the Commission's QF requirements if a petition for waiver submitted concurrently with this application is granted <input type="checkbox"/> The instant facility complies with the Commission's regulations, but has special circumstances, such as the employment of unique or innovative technologies not contemplated by the structure of this form, that make the demonstration of compliance via this form difficult or impossible (describe in Misc. section starting on p. 19)		



Contact Information	2a Name of contact person John Wood		2b Telephone number (619) 232-6564	
	2c Which of the following describes the contact person's relationship to the applicant? (check one) <input type="checkbox"/> Applicant (self) <input type="checkbox"/> Employee, owner or partner of applicant authorized to represent the applicant <input checked="" type="checkbox"/> Employee of a company affiliated with the applicant authorized to represent the applicant on this matter <input type="checkbox"/> Lawyer, consultant, or other representative authorized to represent the applicant on this matter			
	2d Company or organization name (if applicant is an individual, check here and skip to line 2e) <input type="checkbox"/> EWP Renewable Corporation			
	2e Street address (if same as Applicant, check here and skip to line 3a) <input type="checkbox"/> 600 West Broadway, Suite 1600			
	2f City San Diego		2g State/province CA	
	2h Postal code 92101		2i Country (if not United States)	
Facility Identification and Location	3a Facility name Springfield Power, LLC			
	3b Street address (if a street address does not exist for the facility, check here and skip to line 3c) <input type="checkbox"/> 54 Fisher Corner Road			
	3c Geographic coordinates: If you indicated that no street address exists for your facility by checking the box in line 3b, then you must specify the latitude and longitude coordinates of the facility in degrees (to three decimal places). Use the following formula to convert to decimal degrees from degrees, minutes and seconds: decimal degrees = degrees + (minutes/60) + (seconds/3600). See the "Geographic Coordinates" section on page 4 for help. If you provided a street address for your facility in line 3b, then specifying the geographic coordinates below is optional. Longitude <input type="checkbox"/> East (+) _____ degrees Latitude <input type="checkbox"/> North (+) _____ degrees <input type="checkbox"/> West (-) _____ degrees <input type="checkbox"/> South (-) _____ degrees			
	3d City (if unincorporated, check here and enter nearest city) <input type="checkbox"/> Springfield		3e State/province NH	
	3f County (or check here for independent city) <input type="checkbox"/> Sullivan		3g Country (if not United States)	
Transacting Utilities	Identify the electric utilities that are contemplated to transact with the facility.			
	4a Identify utility interconnecting with the facility Public Service of New Hampshire			
	4b Identify utilities providing wheeling service or check here if none <input type="checkbox"/> Public Service of New Hampshire, PPL EnergyPlus			
	4c Identify utilities purchasing the useful electric power output or check here if none <input type="checkbox"/> Public Service of New Hampshire, PPL EnergyPlus			
	4d Identify utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service or check here if none <input type="checkbox"/> Public Service of New Hampshire			

Ownership and Operation

5a Direct ownership as of effective date or operation date: Identify all direct owners of the facility holding at least 10 percent equity interest. For each identified owner, also (1) indicate whether that owner is an electric utility, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or a holding company, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)), and (2) for owners which are electric utilities or holding companies, provide the percentage of equity interest in the facility held by that owner. If no direct owners hold at least 10 percent equity interest in the facility, then provide the required information for the two direct owners with the largest equity interest in the facility.

Full legal names of direct owners	Electric utility or holding company	If Yes, % equity interest
1) <u>Springfield Power, LLC (see "Miscellaneous")</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>100</u> %
2) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
3) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
4) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
5) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
6) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
7) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
8) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
9) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
10) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5b Upstream (i.e., indirect) ownership as of effective date or operation date: Identify all upstream (i.e., indirect) owners of the facility that both (1) hold at least 10 percent equity interest in the facility, and (2) are electric utilities, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or holding companies, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)). Also provide the percentage of equity interest in the facility held by such owners. (Note that, because upstream owners may be subsidiaries of one another, total percent equity interest reported may exceed 100 percent.)

Check here if no such upstream owners exist.

Full legal names of electric utility or holding company upstream owners	% equity interest
1) <u>EWPRC Biomass Holdings, LLC</u>	<u>100</u> %
2) <u>EWP Renewable Corporation</u>	<u>100</u> %
3) <u>EWP America, Inc.</u>	<u>100</u> %
4) <u>Korea East-West Power Co., Ltd.</u>	<u>100</u> %
5) <u>Korea Electric Power (see also "Miscellaneous" section)</u>	<u>100</u> %
6) _____	_____ %
7) _____	_____ %
8) _____	_____ %
9) _____	_____ %
10) _____	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5c Identify the facility operator

EWP Renewable Corporation



Energy Input

6a Describe the primary energy input: (check one main category and, if applicable, one subcategory)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Biomass (specify) | <input type="checkbox"/> Renewable resources (specify) | <input type="checkbox"/> Geothermal |
| <input type="checkbox"/> Landfill gas | <input type="checkbox"/> Hydro power - river | <input type="checkbox"/> Fossil fuel (specify) |
| <input type="checkbox"/> Manure digester gas | <input type="checkbox"/> Hydro power - tidal | <input type="checkbox"/> Coal (not waste) |
| <input type="checkbox"/> Municipal solid waste | <input type="checkbox"/> Hydro power - wave | <input type="checkbox"/> Fuel oil/diesel |
| <input type="checkbox"/> Sewage digester gas | <input type="checkbox"/> Solar - photovoltaic | <input type="checkbox"/> Natural gas (not waste) |
| <input checked="" type="checkbox"/> Wood | <input type="checkbox"/> Solar - thermal | <input type="checkbox"/> Other fossil fuel (describe on page 19) |
| <input type="checkbox"/> Other biomass (describe on page 19) | <input type="checkbox"/> Wind | |
| <input type="checkbox"/> Waste (specify type below in line 6b) | <input type="checkbox"/> Other renewable resource (describe on page 19) | <input type="checkbox"/> Other (describe on page 19) |

6b If you specified "waste" as the primary energy input in line 6a, indicate the type of waste fuel used: (check one)

- Waste fuel listed in 18 C.F.R. § 292.202(b) (specify one of the following)
- Anthracite culm produced prior to July 23, 1985
 - Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more
 - Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more
 - Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste
 - Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste
 - Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation
 - Gaseous fuels (except natural gas and synthetic gas from coal) (describe on page 19)
 - Waste natural gas from gas or oil wells (describe on page 19 how the gas meets the requirements of 18 C.F.R. § 2.400 for waste natural gas; include with your filing any materials necessary to demonstrate compliance with 18 C.F.R. § 2.400)
 - Materials that a government agency has certified for disposal by combustion (describe on page 19)
 - Heat from exothermic reactions (describe on page 19)
 - Residual heat (describe on page 19)
 - Used rubber tires
 - Plastic materials
 - Refinery off-gas
 - Petroleum coke
- Other waste energy input that has little or no commercial value and exists in the absence of the qualifying facility industry (describe in the Miscellaneous section starting on page 19; include a discussion of the fuel's lack of commercial value and existence in the absence of the qualifying facility industry)

6c Provide the average energy input, calculated on a calendar year basis, in terms of Btu/h for the following fossil fuel energy inputs, and provide the related percentage of the total average annual energy input to the facility (18 C.F.R. § 292.202(j)). For any oil or natural gas fuel, use lower heating value (18 C.F.R. § 292.202(m)).

Fuel	Annual average energy input for specified fuel	Percentage of total annual energy input
Natural gas	0 Btu/h	0 %
Oil-based fuels	0 Btu/h	0 %
Coal	0 Btu/h	0 %

Technical Facility Information

Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery by completing the worksheet below. Respond to all items. If any of the parasitic loads and/or losses identified in lines 7b through 7e are negligible, enter zero for those lines.

7a The maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions	19,700 kW
7b Parasitic station power used at the facility to run equipment which is necessary and integral to the power production process (boiler feed pumps, fans/blowers, office or maintenance buildings directly related to the operation of the power generating facility, etc.). If this facility includes non-power production processes (for instance, power consumed by a cogeneration facility's thermal host) , do not include any power consumed by the non-power production activities in your reported parasitic station power.	2,000 kW
7c Electrical losses in interconnection transformers	0 kW
7d Electrical losses in AC/DC conversion equipment, if any	0 kW
7e Other interconnection losses in power lines or facilities (other than transformers and AC/DC conversion equipment) between the terminals of the generator(s) and the point of interconnection with the utility	0 kW
7f Total deductions from gross power production capacity = 7b + 7c + 7d + 7e	2,000.0 kW
7g Maximum net power production capacity = 7a - 7f	17,700.0 kW

7h Description of facility and primary components: Describe the facility and its operation. Identify all boilers, heat recovery steam generators, prime movers (any mechanical equipment driving an electric generator), electrical generators, photovoltaic solar equipment, fuel cell equipment and/or other primary power generation equipment used in the facility. Descriptions of components should include (as applicable) specifications of the nominal capacities for mechanical output, electrical output, or steam generation of the identified equipment. For each piece of equipment identified, clearly indicate how many pieces of that type of equipment are included in the plant, and which components are normally operating or normally in standby mode. Provide a description of how the components operate as a system. Applicants for cogeneration facilities do not need to describe operations of systems that are clearly depicted on and easily understandable from a cogeneration facility's attached mass and heat balance diagram; however, such applicants should provide any necessary description needed to understand the sequential operation of the facility depicted in their mass and heat balance diagram. If additional space is needed, continue in the Miscellaneous section starting on page 19.

The Facility is a small power production facility utilizing waste wood as a biomass fuel. The Facility consists of a boiler and several buildings. The Applicant utilizes a 19.7 MW turbine generator and the necessary systems and appurtenances required to interconnect to PSNH and produce electrical energy for sale. The Facility is interconnected with PSNH at the PSNH main line pole on Gooseneck Road.

Information Required for Small Power Production Facility

If you indicated in line 1k that you are seeking qualifying small power production facility status for your facility, then you must respond to the items on this page. Otherwise, skip page 10.

Certification of Compliance with Size Limitations	Pursuant to 18 C.F.R. § 292.204(a), the power production capacity of any small power production facility, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts. To demonstrate compliance with this size limitation, or to demonstrate that your facility is exempt from this size limitation under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575, 104 Stat. 2834 (1990) <i>as amended by</i> Pub. L. 102-46, 105 Stat. 249 (1991)), respond to lines 8a through 8e below (as applicable).																
	8a Identify any facilities with electrical generating equipment located within 1 mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b, or their affiliates, holds at least a 5 percent equity interest. Check here if no such facilities exist. <input checked="" type="checkbox"/>																
	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%; text-align:center;">Facility location (city or county, state)</th> <th style="width:20%; text-align:center;">Root docket # (if any)</th> <th style="width:30%; text-align:center;">Common owner(s)</th> <th style="width:20%; text-align:center;">Maximum net power production capacity</th> </tr> </thead> <tbody> <tr> <td>1) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>2) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>3) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> </tbody> </table>	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity	1) _____	QF - _____	_____	kW	2) _____	QF - _____	_____	kW	3) _____	QF - _____	_____	kW
	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity													
	1) _____	QF - _____	_____	kW													
	2) _____	QF - _____	_____	kW													
3) _____	QF - _____	_____	kW														
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed																	
8b The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act) provides exemption from the size limitations in 18 C.F.R. § 292.204(a) for certain facilities that were certified prior to 1995. Are you seeking exemption from the size limitations in 18 C.F.R. § 292.204(a) by virtue of the Incentives Act? <input checked="" type="checkbox"/> Yes (continue at line 8c below) <input type="checkbox"/> No (skip lines 8c through 8e)																	
8c Was the original notice of self-certification or application for Commission certification of the facility filed on or before December 31, 1994? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																	
8d Did construction of the facility commence on or before December 31, 1999? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																	
8e If you answered No in line 8d, indicate whether reasonable diligence was exercised toward the completion of the facility, taking into account all factors relevant to construction? Yes <input type="checkbox"/> No <input type="checkbox"/> If you answered Yes, provide a brief narrative explanation in the Miscellaneous section starting on page 19 of the construction timeline (in particular, describe why construction started so long after the facility was certified) and the diligence exercised toward completion of the facility.																	
Certification of Compliance with Fuel Use Requirements	Pursuant to 18 C.F.R. § 292.204(b), qualifying small power production facilities may use fossil fuels, in minimal amounts, for only the following purposes: ignition; start-up; testing; flame stabilization; control use; alleviation or prevention of unanticipated equipment outages; and alleviation or prevention of emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. The amount of fossil fuels used for these purposes may not exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																
	9a Certification of compliance with 18 C.F.R. § 292.204(b) with respect to uses of fossil fuel: <input checked="" type="checkbox"/> Applicant certifies that the facility will use fossil fuels <i>exclusively</i> for the purposes listed above.																
	9b Certification of compliance with 18 C.F.R. § 292.204(b) with respect to amount of fossil fuel used annually: <input checked="" type="checkbox"/> Applicant certifies that the amount of fossil fuel used at the facility will not, in aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																



Information Required for Cogeneration Facility

If you indicated in line 1k that you are seeking qualifying cogeneration facility status for your facility, then you must respond to the items on pages 11 through 13. Otherwise, skip pages 11 through 13.

General Cogeneration Information	<p>Pursuant to 18 C.F.R. § 292.202(c), a cogeneration facility produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. Pursuant to 18 C.F.R. § 292.202(s), "sequential use" of energy means the following: (1) for a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard contained in 18 C.F.R. § 292.205(a); or (2) for a bottoming-cycle cogeneration facility, the use of at least some reject heat from a thermal application or process for power production.</p>	
	<p>10a What type(s) of cogeneration technology does the facility represent? (check all that apply)</p> <p style="text-align: center;"> <input type="checkbox"/> Topping-cycle cogeneration <input type="checkbox"/> Bottoming-cycle cogeneration </p>	
	<p>10b To help demonstrate the sequential operation of the cogeneration process, and to support compliance with other requirements such as the operating and efficiency standards, include with your filing a mass and heat balance diagram depicting average annual operating conditions. This diagram must include certain items and meet certain requirements, as described below. You must check next to the description of each requirement below to certify that you have complied with these requirements.</p>	
	<p>Check to certify compliance with indicated requirement</p>	<p>Requirement</p>
	<input type="checkbox"/>	<p>Diagram must show orientation within system piping and/or ducts of all prime movers, heat recovery steam generators, boilers, electric generators, and condensers (as applicable), as well as any other primary equipment relevant to the cogeneration process.</p>
	<input type="checkbox"/>	<p>Any average annual values required to be reported in lines 10b, 12a, 13a, 13b, 13d, 13f, 14a, 15b, 15d and/or 15f must be computed over the anticipated hours of operation.</p>
	<input type="checkbox"/>	<p>Diagram must specify all fuel inputs by fuel type and average annual rate in Btu/h. Fuel for supplementary firing should be specified separately and clearly labeled. All specifications of fuel inputs should use lower heating values.</p>
	<input type="checkbox"/>	<p>Diagram must specify average gross electric output in kW or MW for each generator.</p>
	<input type="checkbox"/>	<p>Diagram must specify average mechanical output (that is, any mechanical energy taken off of the shaft of the prime movers for purposes not directly related to electric power generation) in horsepower, if any. Typically, a cogeneration facility has no mechanical output.</p>
	<input type="checkbox"/>	<p>At each point for which working fluid flow conditions are required to be specified (see below), such flow condition data must include mass flow rate (in lb/h or kg/s), temperature (in °F, R, °C or K), absolute pressure (in psia or kPa) and enthalpy (in Btu/lb or kJ/kg). Exception: For systems where the working fluid is <i>liquid only</i> (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid are clearly indicated on the diagram or in the Miscellaneous section starting on page 19, only mass flow rate and temperature (not pressure and enthalpy) need be specified. For reference, specific heat at standard conditions for pure liquid water is approximately 1.002 Btu/(lb*R) or 4.195 kJ/(kg*K).</p>
<input type="checkbox"/>	<p>Diagram must specify working fluid flow conditions at input to and output from each steam turbine or other expansion turbine or back-pressure turbine.</p>	
<input type="checkbox"/>	<p>Diagram must specify working fluid flow conditions at delivery to and return from each thermal application.</p>	
<input type="checkbox"/>	<p>Diagram must specify working fluid flow conditions at make-up water inputs.</p>	

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities

EPAct 2005 cogeneration facilities: The Energy Policy Act of 2005 (EPAct 2005) established a new section 210(n) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 824a-3(n), with additional requirements for any qualifying cogeneration facility that (1) is seeking to sell electric energy pursuant to section 210 of PURPA and (2) was either not a cogeneration facility on August 8, 2005, or had not filed a self-certification or application for Commission certification of QF status on or before February 1, 2006. These requirements were implemented by the Commission in 18 C.F.R. § 292.205(d). Complete the lines below, carefully following the instructions, to demonstrate whether these additional requirements apply to your cogeneration facility and, if so, whether your facility complies with such requirements.

11a Was your facility operating as a qualifying cogeneration facility on or before August 8, 2005? Yes No

11b Was the initial filing seeking certification of your facility (whether a notice of self-certification or an application for Commission certification) filed on or before February 1, 2006? Yes No

If the answer to either line 11a or 11b is Yes, then continue at line 11c below. Otherwise, if the answers to both lines 11a and 11b are No, skip to line 11e below.

11c With respect to the design and operation of the facility, have any changes been implemented on or after February 2, 2006 that affect general plant operation, affect use of thermal output, and/or increase net power production capacity from the plant's capacity on February 1, 2006?

Yes (continue at line 11d below)

No. Your facility is not subject to the requirements of 18 C.F.R. § 292.205(d) at this time. However, it may be subject to these requirements in the future if changes are made to the facility. At such time, the applicant would need to recertify the facility to determine eligibility. Skip lines 11d through 11j.

11d Does the applicant contend that the changes identified in line 11c are not so significant as to make the facility a "new" cogeneration facility that would be subject to the 18 C.F.R. § 292.205(d) cogeneration requirements?

Yes. Provide in the Miscellaneous section starting on page 19 a description of any relevant changes made to the facility (including the purpose of the changes) and a discussion of why the facility should not be considered a "new" cogeneration facility in light of these changes. Skip lines 11e through 11j.

No. Applicant stipulates to the fact that it is a "new" cogeneration facility (for purposes of determining the applicability of the requirements of 18 C.F.R. § 292.205(d)) by virtue of modifications to the facility that were initiated on or after February 2, 2006. Continue below at line 11e.

11e Will electric energy from the facility be sold pursuant to section 210 of PURPA?

Yes. The facility is an EPAct 2005 cogeneration facility. You must demonstrate compliance with 18 C.F.R. § 292.205(d)(2) by continuing at line 11f below.

No. Applicant certifies that energy will *not* be sold pursuant to section 210 of PURPA. Applicant also certifies its understanding that it must recertify its facility in order to determine compliance with the requirements of 18 C.F.R. § 292.205(d) *before* selling energy pursuant to section 210 of PURPA in the future. Skip lines 11f through 11j.

11f Is the net power production capacity of your cogeneration facility, as indicated in line 7g above, less than or equal to 5,000 kW?

Yes, the net power production capacity is less than or equal to 5,000 kW. 18 C.F.R. § 292.205(d)(4) provides a rebuttable presumption that cogeneration facilities of 5,000 kW and smaller capacity comply with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2). Applicant certifies its understanding that, should the power production capacity of the facility increase above 5,000 kW, then the facility must be recertified to (among other things) demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Skip lines 11g through 11j.

No, the net power production capacity is greater than 5,000 kW. Demonstrate compliance with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2) by continuing on the next page at line 11g.



EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities (continued)

Lines 11g through 11k below guide the applicant through the process of demonstrating compliance with the requirements for "fundamental use" of the facility's energy output. 18 C.F.R. § 292.205(d)(2). Only respond to the lines on this page if the instructions on the previous page direct you to do so. Otherwise, skip this page.

18 C.F.R. § 292.205(d)(2) requires that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. If you were directed on the previous page to respond to the items on this page, then your facility is an EPAct 2005 cogeneration facility that is subject to this "fundamental use" requirement.

The Commission's regulations provide a two-pronged approach to demonstrating compliance with the requirements for fundamental use of the facility's energy output. First, the Commission has established in 18 C.F.R. § 292.205(d)(3) a "fundamental use test" that can be used to demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Under the fundamental use test, a facility is considered to comply with 18 C.F.R. § 292.205(d)(2) if at least 50 percent of the facility's total annual energy output (including electrical, thermal, chemical and mechanical energy output) is used for industrial, commercial, residential or institutional purposes.

Second, an applicant for a facility that does not pass the fundamental use test may provide a narrative explanation of and support for its contention that the facility nonetheless meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

Complete lines 11g through 11j below to determine compliance with the fundamental use test in 18 C.F.R. § 292.205(d)(3). Complete lines 11g through 11j *even if you do not intend to rely upon the fundamental use test to demonstrate compliance with 18 C.F.R. § 292.205(d)(2)*.

11g Amount of electrical, thermal, chemical and mechanical energy output (net of internal generation plant losses and parasitic loads) expected to be used annually for industrial, commercial, residential or institutional purposes and not sold to an electric utility	MWh
11h Total amount of electrical, thermal, chemical and mechanical energy expected to be sold to an electric utility	MWh
11i Percentage of total annual energy output expected to be used for industrial, commercial, residential or institutional purposes and not sold to a utility = 100 * 11g / (11g + 11h)	0 %

11j Is the response in line 11i greater than or equal to 50 percent?

Yes. Your facility complies with 18 C.F.R. § 292.205(d)(2) by virtue of passing the fundamental use test provided in 18 C.F.R. § 292.205(d)(3). Applicant certifies its understanding that, if it is to rely upon passing the fundamental use test as a basis for complying with 18 C.F.R. § 292.205(d)(2), then the facility must comply with the fundamental use test both in the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years.

No. Your facility does not pass the fundamental use test. Instead, you must provide in the Miscellaneous section starting on page 19 a narrative explanation of and support for why your facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility. Applicants providing a narrative explanation of why their facility should be found to comply with 18 C.F.R. § 292.205(d)(2) in spite of non-compliance with the fundamental use test may want to review paragraphs 47 through 61 of Order No. 671 (accessible from the Commission's QF website at www.ferc.gov/QF), which provide discussion of the facts and circumstances that may support their explanation. Applicant should also note that the percentage reported above will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years. See Order No. 671 at paragraph 51. As such, the applicant should make sure that it reports appropriate values on lines 11g and 11h above to serve as the relevant annual standard, taking into account expected variations in production conditions.

Information Required for Topping-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents topping-cycle cogeneration technology, then you must respond to the items on pages 14 and 15. Otherwise, skip pages 14 and 15.



Usefulness of Topping-Cycle Thermal Output	<p>The thermal energy output of a topping-cycle cogeneration facility is the net energy made available to an industrial or commercial process or used in a heating or cooling application. Pursuant to sections 292.202(c), (d) and (h) of the Commission's regulations (18 C.F.R. §§ 292.202(c), (d) and (h)), the thermal energy output of a qualifying topping-cycle cogeneration facility must be useful. In connection with this requirement, describe the thermal output of the topping-cycle cogeneration facility by responding to lines 12a and 12b below.</p>		
	<p>12a Identify and describe each thermal host, and specify the annual average rate of thermal output made available to each host for each use. For hosts with multiple uses of thermal output, provide the data for each use <i>in separate rows</i>.</p>		
	Name of entity (thermal host) taking thermal output	Thermal host's relationship to facility; Thermal host's use of thermal output	Average annual rate of thermal output attributable to use (net of heat contained in process return or make-up water)
	1)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	2)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	3)	Select thermal host's relationship to facility	Btu/h
		Select thermal host's use of thermal output	
	4)	Select thermal host's relationship to facility	Btu/h
	Select thermal host's use of thermal output		
5)	Select thermal host's relationship to facility	Btu/h	
	Select thermal host's use of thermal output		
6)	Select thermal host's relationship to facility	Btu/h	
	Select thermal host's use of thermal output		
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed			
<p>12b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each use of the thermal output identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's use of thermal output is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific use of thermal output related to the instant facility, then you need only provide a brief description of that use and a reference by date and docket number to the order certifying your facility with the indicated use. Such exemption may not be used if any change creates a material deviation from the previously authorized use.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			

Topping-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing topping-cycle technology must demonstrate compliance with the topping-cycle operating standard and, if applicable, efficiency standard. Section 292.205(a)(1) of the Commission's regulations (18 C.F.R. § 292.205(a)(1)) establishes the operating standard for topping-cycle cogeneration facilities: the useful thermal energy output must be no less than 5 percent of the total energy output. Section 292.205(a)(2) (18 C.F.R. § 292.205(a)(2)) establishes the efficiency standard for topping-cycle cogeneration facilities for which installation commenced on or after March 13, 1980: the useful power output of the facility plus one-half the useful thermal energy output must (A) be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; and (B) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility. To demonstrate compliance with the topping-cycle operating and/or efficiency standards, or to demonstrate that your facility is exempt from the efficiency standard based on the date that installation commenced, respond to lines 13a through 13l below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 13a through 13l below considering only the energy inputs and outputs attributable to the topping-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion (topping or bottoming) of the cogeneration system.

13a Indicate the annual average rate of useful thermal energy output made available to the host(s), net of any heat contained in condensate return or make-up water	Btu/h
13b Indicate the annual average rate of net electrical energy output	kW
13c Multiply line 13b by 3,412 to convert from kW to Btu/h	0 Btu/h
13d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
13e Multiply line 13d by 2,544 to convert from hp to Btu/h	0 Btu/h
13f Indicate the annual average rate of energy input from natural gas and oil	Btu/h
13g Topping-cycle operating value = $100 * 13a / (13a + 13c + 13e)$	0 %
13h Topping-cycle efficiency value = $100 * (0.5*13a + 13c + 13e) / 13f$	0 %
13i Compliance with operating standard: Is the operating value shown in line 13g greater than or equal to 5%? <input type="checkbox"/> Yes (complies with operating standard) <input type="checkbox"/> No (does not comply with operating standard)	
13j Did installation of the facility in its current form commence on or after March 13, 1980? <input type="checkbox"/> Yes. Your facility is subject to the efficiency requirements of 18 C.F.R. § 292.205(a)(2). Demonstrate compliance with the efficiency requirement by responding to line 13k or 13l, as applicable, below. <input type="checkbox"/> No. Your facility is exempt from the efficiency standard. Skip lines 13k and 13l.	
13k Compliance with efficiency standard (for low operating value): If the operating value shown in line 13g is less than 15%, then indicate below whether the efficiency value shown in line 13h greater than or equal to 45%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	
13l Compliance with efficiency standard (for high operating value): If the operating value shown in line 13g is greater than or equal to 15%, then indicate below whether the efficiency value shown in line 13h is greater than or equal to 42.5%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	

Information Required for Bottoming-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents bottoming-cycle cogeneration technology, then you must respond to the items on pages 16 and 17. Otherwise, skip pages 16 and 17.



Usefulness of Bottoming-Cycle Thermal Output	<p>The thermal energy output of a bottoming-cycle cogeneration facility is the energy related to the process(es) from which at least some of the reject heat is then used for power production. Pursuant to sections 292.202(c) and (e) of the Commission's regulations (18 C.F.R. § 292.202(c) and (e)), the thermal energy output of a qualifying bottoming-cycle cogeneration facility must be useful. In connection with this requirement, describe the process(es) from which at least some of the reject heat is used for power production by responding to lines 14a and 14b below.</p>		
	<p>14a Identify and describe each thermal host and each bottoming-cycle cogeneration process engaged in by each host. For hosts with multiple bottoming-cycle cogeneration processes, provide the data for each process <i>in separate rows</i>.</p>		
	Name of entity (thermal host) performing the process from which at least some of the reject heat is used for power production	Thermal host's relationship to facility; Thermal host's process type	Has the energy input to the thermal host been augmented for purposes of increasing power production capacity? (if Yes, describe on p. 19)
	1)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	2)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	3)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
<p><input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed</p>			
<p>14b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each process identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's process is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific bottoming-cycle process related to the instant facility, then you need only provide a brief description of that process and a reference by date and docket number to the order certifying your facility with the indicated process. Such exemption may not be used if any material changes to the process have been made.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			

Bottoming-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing bottoming-cycle technology and for which installation commenced on or after March 13, 1990 must demonstrate compliance with the bottoming-cycle efficiency standards. Section 292.205(b) of the Commission's regulations (18 C.F.R. § 292.205(b)) establishes the efficiency standard for bottoming-cycle cogeneration facilities: the useful power output of the facility must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing. To demonstrate compliance with the bottoming-cycle efficiency standard (if applicable), or to demonstrate that your facility is exempt from this standard based on the date that installation of the facility began, respond to lines 15a through 15h below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 15a through 15h below considering only the energy inputs and outputs attributable to the bottoming-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion of the cogeneration system (topping or bottoming).

15a Did installation of the facility in its current form commence on or after March 13, 1980?

Yes. Your facility is subject to the efficiency requirement of 18 C.F.R. § 292.205(b). Demonstrate compliance with the efficiency requirement by responding to lines 15b through 15h below.

No. Your facility is exempt from the efficiency standard. Skip the rest of page 17.

15b Indicate the annual average rate of net electrical energy output	kW
---	----

15c Multiply line 15b by 3,412 to convert from kW to Btu/h	0 Btu/h
---	---------

15d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
---	----

15e Multiply line 15d by 2,544 to convert from hp to Btu/h	0 Btu/h
---	---------

15f Indicate the annual average rate of supplementary energy input from natural gas or oil	Btu/h
---	-------

15g Bottoming-cycle efficiency value = $100 * (15c + 15e) / 15f$	0 %
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15h Compliance with efficiency standard: Indicate below whether the efficiency value shown in line 15g is greater than or equal to 45%:

Yes (complies with efficiency standard) No (does not comply with efficiency standard)



Miscellaneous

Use this space to provide any information for which there was not sufficient space in the previous sections of the form to provide. For each such item of information *clearly identify the line number that the information belongs to*. You may also use this space to provide any additional information you believe is relevant to the certification of your facility.

Your response below is not limited to one page. Additional page(s) will automatically be inserted into this form if the length of your response exceeds the space on this page. Use as many pages as you require.

* Item 5a and 5b. Following an internal restructuring and indirect upstream tax equity investment, Springfield Power, LLC's ("Springfield") ownership has changed. EWPRC Biomass Holdings, LLC ("EWPRC Biomass Holdings") holds 100% of the membership interests in Springfield. EWP Renewable Corporation ("EWPRC") holds 100% of the Class A membership interests in EWPRC Biomass Holdings. EWPRC, in turn, is a wholly-owned subsidiary of EWP America, Inc. ("EWP America"). EWP America is a wholly-owned subsidiary of Korea East-West Power Corp. ("EWP"), which is a wholly owned subsidiary of Korea Electric Power ("KEP"). None of EWPRC Biomass Holdings, EWPRC, EWP America, EWP or KEP is an "electric utility"; these entities are "electric utility holding companies" but solely with regard to electric facilities that are QFs, exempt wholesale generators, or foreign utility companies.

Springfield notes that Whitehaven Springs Biomass LLC ("Whitehaven") has acquired 100% of the Class B membership interests in EWPRC Biomass Holdings (the "Class B Interests") in a tax equity investment transaction. Pursuant to that transaction, EWPRC continues to manage EWPRC Biomass Holdings and, indirectly, Springfield, subject to certain approval rights held by Whitehaven. EWPRC continues to manage Springfield with respect to its day-to-day operations, including its dispatch and power sales. Whitehaven is a wholly-owned subsidiary of State Street Bank and Trust Company ("State Street"). Neither Whitehaven nor State Street is an "electric company." Whitehaven does not own any interests in any other person. State Street owns interests similar to the Class B Interests in certain other entities that own electric faculties that are QFs or that are exempt wholesale generators.

State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that SPRINGFIELD POWER, LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on January 24, 2008. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **590395**

Certificate Number: **0004210499**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of November A.D. 2018.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

ATTACHMENT B, IV

Response from Pinetree Power – Tamworth

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

Tenacity. Creativity. Results.™

Timothy J. McLaughlin
Attorney at Law

November 16, 2018

Via e-mail only: **robert.bersak@eversource.com**
 rick.white@eversource.com
 david.errichetti@eversource.com

Eversource Energy
Attn: Robert Bersak, Frederick White and David Errichetti
107 Selden Street
Berlin, CT 06037

P.O. Box 270
Hartford CT 06141

Re: Pinetree Power-Tamworth LLC

Dear Messrs. Bersak, White and Errichetti,

In accordance with the provisions of RSA 362-H, and in response to Public Service Company of New Hampshire d/b/a Eversource's ("Eversource") November 6, 2018 solicitation letter, Shaheen & Gordon, P.A. submits the following proposal on behalf of Pinetree Power-Tamworth LLC:

- Response to Questions;
- Draft Confirmation;
- Governing Terms Proposal;
- QF Certification; and
- Secretary of State Certificate.

As you know, RSA 362-H creates a 3-step process under which Eversource must offer to purchase the net energy output of eligible facilities: (1) solicitations of proposals from eligible facilities by Eversource; (2) proposals by eligible facilities; and (3) submission to the PUC of eligible facility proposals that conform with the statute.

In accord with the statute, Eversource was required to solicit proposals from eligible facilities that informed "eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation." The

statue further requires that the solicitation provide certain information concerning pricing and other statutorily required information.

In response to the solicitation, an eligible facility is to submit a proposal and “a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.”

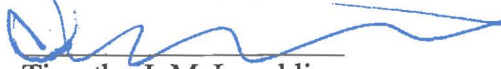
Eversource is then to “select all proposals from eligible facilities that conform to the requirements of this section.” These proposals are then submitted to the PUC as part of Eversource’s “submission for periodic approval of its residential electric customer default service supply solicitation.”

We engage in this brief statutory review because Eversource’s solicitation contains requirements, terms and conditions that are extraneous, in conflict with the statute, and contrary to the statute’s purpose and intention.

Without waiving any rights, in the eligible facility proposal we have accepted certain of the terms and conditions from your November 6, 2018 solicitation. The eligible facility proposal submitted hereby conforms with the statue. If you claim that the proposal does not conform with the statue, please let us know with specificity the reasons for your assertion of non-compliance by November 22, 2018. If there is no claim of non-compliance, then we expect Eversource will submit the proposal to the PUC in accordance with the statute, and we similarly expect to be so notified thereof by November 22, 2018.

Finally, if you do not intend to submit the proposal to the PUC as required by statue, then we shall do so.

Sincerely,



Timothy J. McLaughlin
tmclaughlin@shaheengordon.com

TJM/jpk

cc: Pinetree Power-Tamworth LLC

Encl.: Response to Questions
Draft Confirmation
Governing Terms Proposal
QF Certification
Secretary of State Certificate

Pinetree Power Tamworth, LLC (Seller) Response to PSNH RSA 362-H Offer To Purchase Net Energy Output

1. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.

A: Seller confirms that the Facility is an “Eligible Facility” as defined in RSA 362-H:1, V(a) given that the Facility: (i) produces electricity for sale by the use of biomass fuel as its primary energy source, (ii) has a power production capacity not greater than 25 megawatts excluding station service, (iii) is interconnected with an electric distribution or transmission system located in New Hampshire, and (iv) began operation prior to January 1, 2006.

2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.

A: The requested information is not required pursuant to RSA 362-H. However, Seller confirms that it currently has such authority as a QF (attached). The Facility also has market-based rate authority under Section 205 of the Federal Power Act.

3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.

A: See attached

4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.

A: RSA 362-H:2, II provides:

II. Each eligible facility’s proposal in response to such solicitation shall provide a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

During the Term, as defined in the Confirmation, Seller anticipates hourly operation each month of approximately 20.5 MW. Resulting net monthly generation should be between 14,000-15,300 MWh, except during April 2019, where a scheduled outage will bring net generation to approximately 12,200 MWhs for that month.

5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

A: Attached is Seller's proposed executed draft Confirmation in conformity with RSA 362-H.

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW OF THIS CONFIRMATION AND ITS ATTACHMENT A AS BEING IN CONFORMITY WITH RSA 362-H.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by Pinetree Power Tamworth LLC (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction arises from RSA 362-H and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362- H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned by the terms herein and in Attachment A and an order from the NHPUC reviewing this Confirmation and its Attachment A and finding that they are in conformity with RSA 362-H.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: **PINETREE POWER TAMWORTH LLC**
Legal Name

69 Plains Rd. Tamworth, NH 03890
Address

603-323-8187
Telephone

Limited Liability Company - NH
Entity Type and State of Formation

Eligible Facility: Seller's 20.5 MW biomass fired generating facility which is located in Tamworth, New Hampshire, identified in the ISO-NE market settlement system with the Asset name Tamworth and ID # 592.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final NHPUC Determination that this Confirmation and its Attachment A are in conformity with RSA 362-H or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

For the Delivery Period, PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I, which will be either: (i) 80% of the difference between the competitively determined default energy rate, and the rate component for compliance with RSA 362-F, if included in the default energy rate, or (ii) 80% of the competitively determined default energy rate if the rate component for compliance with RSA 362-F is not included in the default energy rate.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer (other than Buyer's reluctance to pay the adjusted energy rate for this energy), Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by designating PSNH, ID 50094, the Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue that PSNH receives from ISO-NE shall be credited to Seller by the 21st day of the next month.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset

and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures. [PSNH needs to explain how this clause conforms with previous clause requesting that PSNH be Asset Owner for ISO-NE billing and settlement purposes.]

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- An order of the NHPUC reviewing this Confirmation and its Attachment A and finding them to be in conformity with RSA 362-H,
- PSNH’s requirement to comply with the terms of RSA 362-H arise solely from RSA 362-H.
- The Facility shall maintain its status as an “Eligible facility” per RSA 362-H throughout such Term.

Cost Recovery:

As provided in RSA 362-H:2, V PSNH is eligible to recover the Transaction’s difference between its energy purchase costs and the market clearing price through a nonbypassable delivery services charge applicable to all customer’s in PSNH’s service territory. The charge may include reasonable costs incurred by PSNH, and the charges shall be allocated using the customer class allocation percentages approved in NHPUC docket DE 14-238, order 25,920.

Definitions:

“**Day-Ahead Locational Marginal Price**” shall be given the meaning given it in ISO NE Market Rule 1.

“**Real-Time Locational Marginal Price**” shall be given the meaning given it in ISO NE Market Rule 1.

“**Market Energy Clearing Price**” means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real-time energy market, respectively.

“**Unit Contingent**” means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

“**NHPUC Order**” means receipt of a final, decision from the New Hampshire Public Utilities Commission, stating that it has reviewed this Confirmation and its Attachment A and finds they are in conformity with RSA 362-H.

“**Delivered Energy**” is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
Tamworth	592	Engie Energy Marketing NA, Inc.	UN.TAMWORTH115TAMW

Governing Terms:

All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices:

Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:

Frederick White
860-665-5272 (phone)
860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:

David Errichetti
860-665-4519 (phone)
860-665-4583 (fax)
david.errichetti@eversource.com

If to Seller:

Primary Contact:

Robert Lussier (name)
603-323-8187 (phone)
603-323-7501 (fax)
Robert.lussier@engie.com (email)

Secondary Contact:

Alonzo Ramirez (name)
713-636-1237 (phone)
713-636-1858 (fax)
Alonzo.ramirez@engie.com (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for the commission's review of this Confirmation and its Attachment A for conformity with RSA 362-H.

PINETREE POWER TAMWORTH LLC

BY  JS

Name: STEFAAN SERCU

Title: PRESIDENT

Date NOVEMBER 15, 2018

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntary act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the facility owned by Seller as set forth in the Confirmation (the “Facility”).

PSNH’s performance hereunder is expressly subject to and conditioned upon the terms herein and in the Confirmation and an order from the New Hampshire Public Utilities Commission (“NHPUC”) reviewing the Confirmation and Governing Terms and finding that provisions addressed by RSA 362-H and contained herein are in conformity with RSA 362-H.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the point of interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in the Confirmation.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time at the Buyer’s meter used for billing and revenue determination.

“Energy Price” shall have the meaning as set forth in the Confirmation.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in the Confirmation.

“FERC” shall mean the United States Federal Energy Regulatory Commission and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean any practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility, or between Seller, the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall mean the point of interconnection set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“**Law**” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“**Locational Marginal Price**” or “LMP” shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Participants Agreement**” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**New England Control Area**” shall have the meaning as set forth in the ISO-NE Tariff.

“**Party**” and “**Parties**” shall mean the Buyer as defined herein and/or Seller, as defined in the Confirmation.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on the Confirmation.

“**Products**” shall mean Energy only.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s order reviewing the Governing Terms and the Confirmation and finding that they are in conformity with RSA 362-H, provided that such order does not include any conditions or modifications that are inconsistent with RSA 362-H.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in the Confirmation.

“Term” shall have the meaning set forth in the Confirmation.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in the Confirmation.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy, and as further defined in the Confirmation.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in the Confirmation.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC (if applicable) and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage required under the Facility's existing Interconnection Agreement and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of the initial sale under the Confirmation, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies,

criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall obtain and maintain any requisite authority to sell the output of the Facility under applicable law.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms and the Confirmation. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Throughout the Term, Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The meter used by Buyer (or its Affiliate) for billing and revenue purposes shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in the Confirmation.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided

in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, is subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a sale or transfer of the Facility and the Governing Terms and Confirmation; or

(e) Assignment. The assignment of these Governing Terms by Seller, except as permitted in accordance with Article 12.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party or in connection with Seller's sale or transfer of its interest (or any part thereof) in the Facility.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in the Confirmation.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words “hereof” and “hereunder” shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer, in consultation with Seller, shall modify these Governing Terms and submit the modified document to the NHPUC for its review for conformity with RSA 362-H. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review for conformity with RSA 362-H .

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms and the Confirmation shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

December 15, 2008

VIA ELECTRONIC FILING

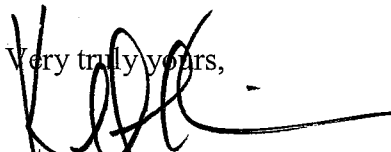
The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Notice of Self-Recertification of Qualifying Facility Status of Pinetree Power -
Tamworth, Inc. to Reflect Change of Ownership, Docket No. QF86-511-005

Dear Ms. Bose:

Attached for electronic filing is a notice of the self-recertification of Pinetree Power - Tamworth, Inc. as a Qualifying Cogeneration Facility. As required under Sections 292.207(a)(1) and 131.80 of the Federal Energy Regulatory Commission's Regulations, 18 C.F.R. §§ 131.80 and 292.207 (2008), this notice of self-recertification is being submitted in the format prescribed by the Commission's Form 556.

If there are any questions about the instant filing, please feel free to contact me at the number listed above.

Very truly yours,

Kenneth L. Wiseman
Mark F. Sundback
Jennifer L. Spina

Attachments

FERC Form No. 556
18 C.F.R. § 131.80

CERTIFICATION OF QUALIFYING FACILITY STATUS FOR AN EXISTING OR A
PROPOSED SMALL POWER PRODUCTION OR COGENERATION FACILITY

INFORMATION ABOUT COMPLIANCE

Compliance with the information collection requirements established by the FERC Form No. 556 is required to obtain and maintain status as a qualifying facility. *See* 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

SUBMITTING COMMENTS ON PUBLIC REPORTING BURDEN

The estimated burden for completing FERC Form No. 556, including gathering and reporting information, is 4 hours for self-certifications and 38 hours for applications for Commission certification. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Michael Miller, Office of the Executive Director (ED-34), Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

GENERAL INSTRUCTIONS

Complete this form by replacing bold text below with responses to each item, as required.

PART A: GENERAL INFORMATION TO BE SUBMITTED BY ALL APPLICANTS

1a. Full name of applicant: [Note: Applicant is the legal entity submitting this form, not the individual employee making the filing. Generally, the Applicant will be a company, corporation or organization, unless the facility is owned directly by an individual or individuals.]

Pinetree Power - Tamworth, Inc. ("Pinetree Tamworth")

Docket Number assigned to the immediately preceding submittal filed with the Commission in connection with the instant facility, if any:

QF86-511-004. A notice of application for Commission certification as a qualifying small power production facility was filed on January 30, 1986. Supplements to the notice of application were filed on September 5, 2003, January 23, 2004, March 18, 2005 and November 28, 2006.

Purpose of instant filing (self-certification or self-recertification [18 C.F.R. § 292.207(a)(1)], or application for Commission certification or recertification [18 C.F.R. §§ 292.207(b) and (d)(2)]):

Self-recertification. The purpose of this filing is to notify the Commission of: (i) changes in the upstream ownership of the Pinetree Power - Tamworth, Inc. facility, an approximately 21.5 MW small power production facility located in Tamworth, New Hampshire (the "Facility"), which have occurred since the last filing in this docket, and (ii) to provide the Commission with certain information which was not provided in the original application, but has subsequently become required, or which has changed since the Facility was certified by the Commission.

1b. Full address of applicant:

**Pinetree Power - Tamworth, Inc. c/o GDF SUEZ S.A.
Attn: James L. Thorne
Senior Regulatory Counsel
GDF SUEZ Energy North America, Inc.
1990 Post Oak Blvd., #1900
Houston, TX 77056
713-636-1396
James.Thorne@gdfsuezna.com**

1c. Indicate the owner(s) of the facility (including the percentage of ownership held by any electric utility or electric utility holding company, or by any persons owned by either) and the operator of the facility.

The Facility is wholly owned, and operated, by Pinetree Tamworth. Pinetree Tamworth is owned 100% by SUEZ Energy Generation North America, Inc., which is an indirect wholly-owned subsidiary of GDF SUEZ S.A. ("GDF SUEZ"), an electric utility holding company.

Additionally, state whether or not any of the non-electric utility owners or their upstream owners are engaged in the generation or sale of electric power, or have any ownership or operating interest in any electric facilities other than qualifying facilities.

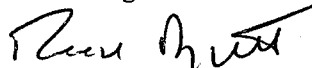
GDF SUEZ owns indirectly a 12.469% in Gaz Metro Limited Partnership, which is the corporate parent of Green Mountain Power Corporation ("Green Mountain"). Green Mountain is a small, vertically-integrated electric utility with market-based rate authority that is engaged primarily in the distribution and sale of electricity to retail and wholesale electric service customers in Vermont. Except for certain facilities, the output of which is not transmitted to the grid, neither GDF SUEZ nor any of its subsidiaries, other than Green Mountain, are currently engaged in the generation or sale of electric power in the United States, other than the sale of electric power from QFs or eligible facilities of exempt wholesale generators ("EWGs"), or sales made by power marketers, or have any ownership or operating

interest in any electric facilities, other than those owned by QFs, EWGs and power marketers., The electric facilities that are not owned by QFs, EWGs or power marketers, and whose output is not transmitted to the grid, are owned by College Park Energy, LLC, Hawkins Point Energy, LLC, SUEZ-DEGS of Lansing, LLC and SUEZ-DEGS of Owings Mills, LLC., all of which are indirect subsidiaries of GDF SUEZ. Each of those subsidiaries has entered into "inside-the-fence" arrangements. One way in which those arrangements are structured is that the GDF SUEZ subsidiary operates an electric generation facility owned by a third-party and the output of the electric facility is provided to the owner for its consumption "inside-the-fence." The other alternative is that the GDF SUEZ subsidiary owns the electric generation facility, leases it to a third-party who operates it, and the lessee then provides the power to its structures that are "inside-the-fence."

In order to facilitate review of the application, the applicant may also provide an ownership chart identifying the upstream ownership of the facility. Such chart should indicate ownership percentages where appropriate.

A diagram depicting the current upstream ownership of the Facility is attached as Attachment 1.

1d. Signature of authorized individual evidencing accuracy and authenticity of information provided by applicant: [Note: A signature on a filing shall constitute a certificate that (1) the signer has read the filing and knows its contents; (2) the contents are true as stated, to the best knowledge and belief of the signer; and (3) the signer possesses full power and authority to sign the filing. A person submitting a self-certification electronically via eFiling may use typed characters representing their name to show that the person has signed the document. See 18 C.F.R. § 385.2005.]



Name: Reese Doggett *RD*
Title: Vice President - Asset Management

2. Person to whom communications regarding the filed information may be addressed:

Name: **James L. Thorne**
Title: **Senior Regulatory Counsel**
Telephone: **(713) 636-1396**
Mailing Address: **GDF SUEZ Energy North America, Inc.**
1990 Post Oak Blvd., #1900
Houston, TX 77056

Name: **Kenneth L. Wiseman**
Mark F. Sundback
Jennifer L. Spina
Title: **Counsel for GDF SUEZ S.A.**

Telephone: **(202) 662-2700**
Mailing Address: **Andrews Kurth LLP**
1350 I Street, NW
Suite 1100
Washington, DC 20005

3a. Location of facility to be certified:

State: **New Hampshire**

County: **Carroll County**

City or town: **Tamworth**

Street address (if known): **469 Plains Road
Tamworth, New Hampshire 03890**

3b. Indicate the electric utilities that are contemplated to transact with the qualifying facility (if known) and describe the services those electric utilities are expected to provide:

Public Service Company of New Hampshire provides interconnection, transmission and back-up services.

Indicate utilities interconnecting with the facility and/or providing wheeling service [18 C.F.R. §§ 292.303(c) and (d)]:

Public Service Company of New Hampshire.

Indicate utilities purchasing the useful electric power output [18 C.F.R. §§ 292.101(b)(2), 292.202(g) and 292.303(a)]:

Public Service Company of New Hampshire

Indicate utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service [18 C.F.R. §§ 292.101(b)(3), (b)(8), 292.303(b) and 292.305(b)]:

Public Service Company of New Hampshire provides back-up service on two different systems, *i.e.*, the 115 KV system and a 34.5 KV system described as the 346 line.

4a. Describe the principal components of the facility including boilers, prime movers and electric generators, and explain their operation. Include transmission lines, transformers and switchyard equipment, if included as part of the facility.

The Facility is a small power production facility utilizing wood as a biomass fuel. The facility consists of a single boiler and steam turbine to produce 21.5 MW net generating capability.

4b. Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery and show the derivation. [Note: Maximum gross output is the maximum amount of power that the facility is able to produce, measured at the terminals of the generator(s). Maximum net output is maximum gross output minus (1) any auxiliary load for devices that are necessary and integral to the power production process (fans, pumps, etc.), and (2) any losses incurred from the generator(s) to the point of delivery. If any electric power is consumed at the location of the QF (or thermal host) for purposes not related to the power production process, such power should not be subtracted from gross output for purposes of reporting maximum net output here.]

Gross Power Production: **24 MW**

Net Power Production: **21.5 MW**

Derivation (assumptions about losses, auxiliary load or lack thereof, and calculation of gross and net output): Auxiliary Loads: **2.5 MW**

4c. Indicate the actual or expected installation and operation dates of the facility, or the actual or expected date of completion of the reported modification to the facility:

The Facility commenced operations in December 1987.

4d. Describe the primary energy input (e.g., hydro, coal, oil [18 C.F.R. § 292.202(l)], natural gas [18 C.F.R. § 292.202(k)], solar, geothermal, wind, waste, biomass [18 C.F.R. § 292.202(a)], or other). For a waste energy input that does not fall within one of the categories on the Commission's list of previously approved wastes, demonstrate that such energy input has little or no current commercial value and that it exists in the absence of the qualifying facility industry [18 C.F.R § 292.202(b)].

The fuel for the Facility is biomass in the form of wood chips, bark and wood fines.

5. Provide the average annual hourly energy input in terms of Btu for the following fossil fuel energy inputs, and provide the related percentage of the total average annual hourly energy input to the facility [18 C.F.R § 292.202(j)]. For any oil or natural gas fuel, use lower heating value [18 C.F.R § 292.202(m)]:

The primary energy source for the Facility is biomass in the form of wood chips, bark and fines. The Facility does not use natural gas, coal or oil.

Coal: N/A

Natural gas: N/A

Oil: N/A

6. Discuss any particular characteristic of the facility which the cogenerator or small power producer believes might bear on its qualifying status.

None.

PART B: DESCRIPTION OF THE SMALL POWER PRODUCTION FACILITY

Items 7 and 8 only need to be answered by applicants seeking certification as a small power production facility. Applicants for certification as a cogeneration facility may delete Items 7 and 8 from their application, or enter "N/A" at both items.

7. Describe how fossil fuel use will not exceed 25 percent of the total annual energy input limit [18 C.F.R §§ 292.202(j) and 292.204(b)]. Also, describe how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): ignition, start-up, testing, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public.

No fossil fuel is used.

8. If the facility reported herein is not an eligible solar, wind, waste or geothermal facility, and if any other non-eligible facility located within one mile of the instant facility is owned by any of the entities (or their affiliates) reported in Part A at item 1c above and uses the same primary energy input, provide the following information about the other facility for the purpose of demonstrating that the total of the power production capacities of these facilities does not exceed 80 MW [18 C.F.R § 292.204(a)]: [See definition of an "eligible facility" below. Note that an "eligible facility" is a specific type of small power production facility that is eligible for special treatment under the Wind, Waste and Geothermal Power Production Incentives Act of 1990, as subsequently amended in 1991, and should not be confused with facilities that are generally eligible for QF status.]

Facility name, if any (as reported to the Commission):

N/A

Commission Docket Number:

N/A

Name of common owner:

N/A

Common primary energy source used as energy input:

N/A

Power production capacity (MW):

N/A

An eligible solar, wind, waste or geothermal facility, as defined in Section 3(17)(E) of the Federal Power Act, is a small power production facility that produces electric energy solely by the use, as a primary energy input, of solar, wind, waste or geothermal resources, for which either an application for Commission certification of qualifying status [18 C.F.R § 292.207(b)] or a notice of self-certification of qualifying status [18 C.F.R § 292.207(a)] was submitted to the Commission not later than December 31, 1994, and for which construction of such facility commences not later than December 31, 1999, or if not, reasonable diligence is exercised toward the completion of such facility, taking into account all factors relevant to construction of the facility.

PART C: DESCRIPTION OF THE COGENERATION FACILITY

Items 9 through 15 only need to be answered by applicants seeking certification as a cogeneration facility. Applicants for certification as a small power production facility may delete Items 9 through 15 from their application, or enter "N/A" at each item.

9. Describe the cogeneration system [18 C.F.R §§ 292.202(c) and 292.203(b)], and state whether the facility is a topping-cycle [18 C.F.R § 292.202(d)] or bottoming-cycle [18 C.F.R § 292.202(e)] cogeneration facility.

N/A

10. To demonstrate the sequentiality of the cogeneration process [18 C.F.R § 292.202(s)] and to support compliance with other requirements such as the operating and efficiency standards (Item 11 below), provide a mass and heat balance (cycle) diagram depicting average annual hourly operating conditions. Also, provide:

Using lower heating value [18 C.F.R § 292.202(m)], all fuel flow inputs in Btu/hr., separately indicating fossil fuel inputs for any supplementary firing in Btu/hr. [18 C.F.R § 292.202(f)]:

N/A

Average net electric output (kW or MW) [18 C.F.R § 292.202(g)]:

N/A

Average net mechanical output in horsepower [18 C.F.R § 292.202(g)]:

N/A

Number of hours of operation used to determine the average annual hourly facility inputs and outputs:

N/A

Working fluid (e.g., steam) flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application, including flow rates (lbs./hr.), temperature (deg. F), pressure (psia), and enthalpy (Btu/lb.):

N/A

11. Compute the operating value [applicable to a topping-cycle facility under 18 C.F.R § 292.205(a)(1)] and the efficiency value [18 C.F.R §§ 292.205(a)(2) and (b)], based on the information provided in and corresponding to item 10, as follows:

Pt = Average annual hourly useful thermal energy output

Pe = Average annual hourly electrical output

Pm = Average annual hourly mechanical output

Pi = Average annual hourly energy input (natural gas or oil)

Ps = Average annual hourly energy input for supplementary firing (natural gas or oil)

Operating standard = 5% or more

Operating value = $Pt / (Pt + Pe + Pm)$

N/A

Efficiency standard applicable to natural gas and oil fuel used in a topping-cycle facility:

= 45% or more when operating value is less than 15%, or 42.5% or more when operating value is equal to or greater than 15%.

Efficiency value = $(Pe + Pm + 0.5Pt) / (Pi + Ps)$

N/A

Efficiency standard applicable to natural gas and oil fuel used for supplementary firing component of a bottoming-cycle facility:

= 45% or more

Efficiency value = $(Pe + Pm) / Ps$

N/A

FOR TOPPING-CYCLE COGENERATION FACILITIES

Items 12 and 13 only need to be answered by applicants seeking certification as a topping-cycle cogeneration facility. Applicants for certification as a small power production facility or bottoming-cycle cogeneration facility may delete Items 12 and 13 from their application, or enter "N/A" at each item.

12. Identify the entity (i.e., thermal host) which will purchase the useful thermal energy output from the facility [18 C.F.R § 292.202(h)]. Indicate whether the entity uses such output for the purpose of space and water heating, space cooling, and/or process use.

N/A

13. In connection with the requirement that the thermal energy output be useful [18 C.F.R § 292.202(h)]:

For process uses by commercial or industrial host(s), describe each process (or group of similar processes using the same quality of steam) and provide the average annual hourly thermal energy made available to the process, less process return. For a complex system, where the primary steam header at the host-side is divided into various sub-uses, each having different pressure and temperature characteristics, describe the processes associated with each sub-use and provide the average annual hourly thermal energy delivered to each sub-use, less process return from such sub-use. Provide a diagram showing the main steam header and the sub-uses with other relevant information such as the average header pressure (psia), the temperature (deg.F), the enthalpy (Btu/lb.), and the flow (lb./hr.), both in and out of each sub-use. For space and water heating, describe the type of heating involved (e.g., office space heating, domestic water heating) and provide the average annual hourly thermal energy delivered and used for such purpose. For space cooling, describe the type of cooling involved (e.g., office space cooling) and provide the average annual hourly thermal energy used by the chiller.

N/A

FOR BOTTOMING-CYCLE FACILITIES

Item 14 only needs to be answered by applicants seeking certification as a bottoming-cycle cogeneration facility. Applicants for certification as a small power production facility or topping-cycle cogeneration facility may delete Item 14 from their application, or enter "N/A."

14. Provide a description of the commercial or industrial process or other thermal application to which the energy input to the system is first applied and from which the reject heat is then used for electric power production.

N/A

FOR NEW COGENERATION FACILITIES

Response to Item 15 is only required for certain applicants for qualified cogeneration facility status, as described below. Applicants for small power production facilities or for cogeneration facilities not meeting the criteria outlined below may delete Item 15 from their application, or enter "N/A." In addition, per 18 C.F.R. § 292.205(d)(4) all cogeneration facilities 5 MW and smaller are presumed to comply with the requirements of 18 C.F.R. § 292.205(d)(1) and (d)(2), and therefore need not respond to Item 15. For those applicants required to respond to Item 15, *see* 18 C.F.R. § 292.205(d) and Order No. 671 for more information on making the demonstrations required in Item 15.

15. For any cogeneration facility that had not filed a notice of self-certification or an application for Commission certification under 18 C.F.R. § 292.207 prior to February 2, 2006, also show:

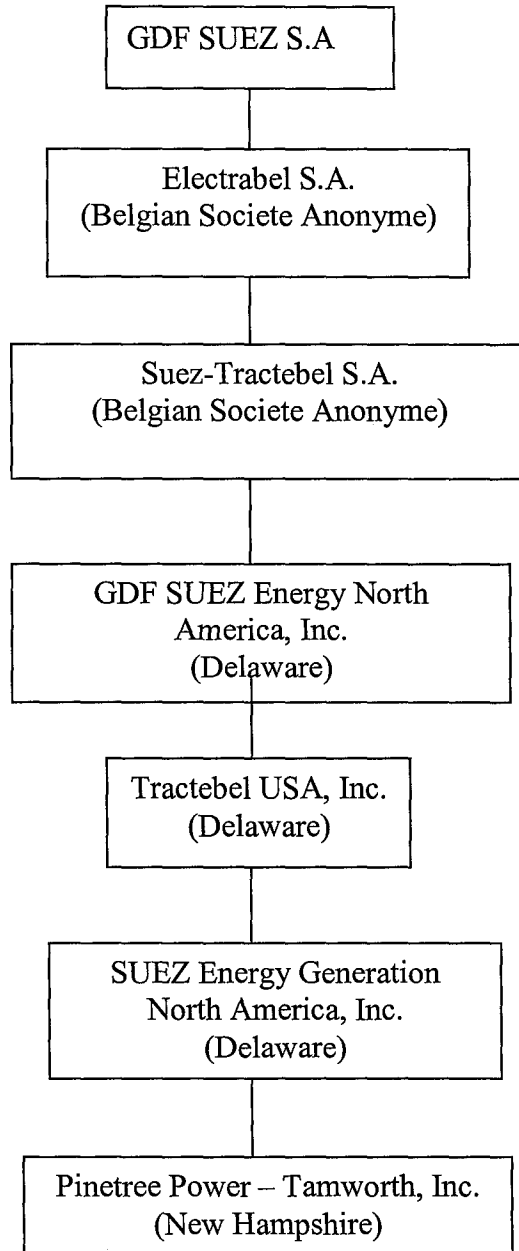
(i) The thermal energy output of the cogeneration facility is used in a productive and beneficial manner [18 C.F.R §§ 292.205(d)(1), (d)(4) and (d)(5)]; and

(ii) The electrical, thermal, chemical and mechanical output of the cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility [18 C.F.R §§ 292.205(d)(2), (d)(3) and (d)(4)].

N/A

Attachment 1
[Ownership Chart]

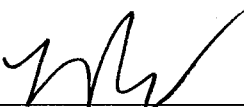
**Organization Chart
Pinetree Power – Tamworth, Inc.**



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing notice of self-recertification of the Pinetree Power - Tamworth, Inc. Facility upon each person designated on the official service list compiled by the Secretary in Docket No. QF86-511-000 and upon any affected utilities and State regulatory authorities in accordance with 18 C.F.R. § 292.207(a)(1)(ii).

Dated at Washington, DC, this 15th day of December, 2008.



Lisa M. Purdy

State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that PINETREE POWER-TAMWORTH LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on January 29, 1986. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 92113

Certificate Number: 0004211094



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 14th day of November A.D. 2018.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

ATTACHMENT B, V

Response from Indeck Alexandria

SHAHEEN & GORDON, P.A.

A T T O R N E Y S A T L A W

Tenacity. Creativity. Results.™

Timothy J. McLaughlin
Attorney at Law

November 16, 2018

Via e-mail only: **robert.bersak@eversource.com**
 rick.white@eversource.com
 david.errichetti@eversource.com

Eversource Energy
Attn: Robert Bersak, Frederick White and David Errichetti
107 Selden Street
Berlin, CT 06037

P.O. Box 270
Hartford CT 06141

Re: DG Whitefield, LLC

Dear Messrs. Bersak, White and Errichetti,

In accordance with the provisions of RSA 362-H, and in response to Public Service Company of New Hampshire d/b/a Eversource's ("Eversource") November 6, 2018 solicitation letter, Shaheen & Gordon, P.A. submits the following proposal on behalf of DG Whitefield, LLC:

- Response to Questions;
- Draft Confirmation;
- Governing Terms Proposal;
- QF Certification; and
- Secretary of State Certificate.

As you know, RSA 362-H creates a 3-step process under which Eversource must offer to purchase the net energy output of eligible facilities: (1) solicitations of proposals from eligible facilities by Eversource; (2) proposals by eligible facilities; and (3) submission to the PUC of eligible facility proposals that conform with the statute.

In accord with the statute, Eversource was required to solicit proposals from eligible facilities that informed "eligible facilities of the opportunity to submit a proposal to enter into a power purchase agreement with the electric distribution company under which the electric distribution company would purchase an amount of energy from the eligible facility for a period that is coterminous with the time period used in the default service supply solicitation." The

statute further requires that the solicitation provide certain information concerning pricing and other statutorily required information.

In response to the solicitation, an eligible facility is to submit a proposal and “a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.”

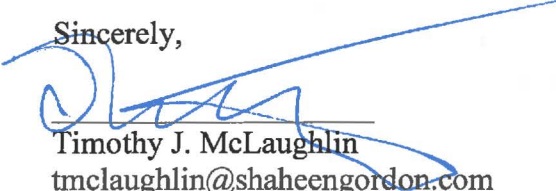
Eversource is then to “select all proposals from eligible facilities that conform to the requirements of this section.” These proposals are then submitted to the PUC as part of Eversource’s “submission for periodic approval of its residential electric customer default service supply solicitation.”

We engage in this brief statutory review because Eversource’s solicitation contains requirements, terms and conditions that are extraneous, in conflict with the statute, and contrary to the statute’s purpose and intention.

Without waiving any rights, in the eligible facility proposal we have accepted certain of the terms and conditions from your November 6, 2018 solicitation. The eligible facility proposal submitted hereby conforms with the statute. If you claim that the proposal does not conform with the statute, please let us know with specificity the reasons for your assertion of non-compliance by November 22, 2018. If there is no claim of non-compliance, then we expect Eversource will submit the proposal to the PUC in accordance with the statute, and we similarly expect to be so notified thereof by November 22, 2018.

Finally, if you do not intend to submit the proposal to the PUC as required by statute, then we shall do so.

Sincerely,



Timothy J. McLaughlin
tmclaughlin@shaheengordon.com

TJM/jpk

cc: DG Whitefield, LLC

Encl.: Response to Questions
Draft Confirmation
Governing Terms Proposal
QF Certification
Secretary of State Certificate

DG Whitefield LLC (Seller) Response to PSNH RSA 362-H Offer To Purchase Net Energy Output

1. Confirmation in writing representing that your facility is indeed an “eligible facility” under RSA Chapter 362-H.

A: Seller confirms that the Facility is an “Eligible Facility” as defined in RSA 362-H:1, V(a) given that the Facility: (i) produces electricity for sale by the use of biomass fuel as its primary energy source, (ii) has a power production capacity not greater than 25 megawatts excluding station service, (iii) is interconnected with an electric distribution or transmission system located in New Hampshire, and (iv) began operation prior to January 1, 2006.

2. Evidence of authority under the Federal Power Act to make the wholesale energy sales contemplated by RSA Chapter 362-H. If such authority stems from certification as a “qualifying facility” (“QF”) under the Public Utility Regulatory Policies Act (“PURPA”), please provide a copy of the facility’s QF certification.

A: The requested information is not required pursuant to RSA 362-H. However, Seller confirms that it currently has such authority as a QF (attached), but is separately seeking market-based rate authority under Section 205 of the Federal Power Act.

3. Evidence of corporate good-standing and authority to do business in the State of New Hampshire.

A: See attached

4. A non-binding proposed schedule of hourly net output amounts during the February 1, 2019 through July 31, 2019 term of Eversource’s next default energy solicitation.

A: RSA 362-H:2, II provides:

II. Each eligible facility’s proposal in response to such solicitation shall provide a nonbinding proposed schedule of hourly net output amounts during the term stated over a mutually agreeable period, whether daily, monthly, or over the term used in the default service supply solicitation for the applicable default energy rate and such other information as needed for the eligible facility to submit and the electric distribution company to evaluate the proposal.

A: During the Term, as defined in the Confirmation, Seller anticipates hourly operation each month in a range of 12.5-16.5 MW with a potential high hourly operation at 17.25

MW. Resulting net monthly generation should be between 10,500-11,600 MWh, except during May 2019, where a scheduled outage will bring net generation to approximately 9,000 MWhs for that month.

5. A completed "Draft Confirmation" to express Seller's preliminary indication of interest and to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for PSNH to submit to the NHPUC as part of its submission for periodic approval of its residential electric customer default service supply solicitation as required by RSA Chapter 362-H.

A: Attached is Seller's proposed executed draft Confirmation in conformity with RSA 362-H.

DRAFT

THIS DOCUMENT CONSTITUTES FORM OF CONFIRMATION ON THE PART OF THE SELLER. IT DOES NOT CONSTITUTE AN OFFER BY PSNH CAPABLE OF ACCEPTANCE AND NO LEGALLY BINDING COMMITMENT OR OBLIGATION RELATED TO THE SUBJECT MATTER OF THIS LETTER SHALL EXIST UNLESS AND UNTIL THE EXECUTION AND DELIVERY OF DEFINITIVE DOCUMENTS BY SELLER CONTAINING TERMS AND CONDITIONS, AND REVIEW OF THIS CONFIRMATION AND ITS ATTACHMENT A AS BEING IN CONFORMITY WITH RSA 362-H.

FORM OF CONFIRMATION

This Transaction Confirmation (“Confirmation”) relates to the sale of energy by DG Whitefield, LLC (“Seller”) to Public Service Company of New Hampshire (“PSNH”). This Confirmation is for the sale of Unit Contingent Energy (as defined below) from Seller’s Eligible Facility to PSNH (the “Transaction”).

PSNH notes that this Transaction arises from RSA 362-H and is not a voluntarily act of PSNH. This Transaction is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362- H:1,V,(a), located in its service territory.

PSNH’s performance under this Confirmation is expressly subject to and conditioned the terms herein and in Attachment A and an order from the NHPUC reviewing this Confirmation and its Attachment A and finding that they are in conformity with RSA 362-H.

Buyer: Public Service Company of New Hampshire
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
A New Hampshire corporation

Seller: **DG Whitefield, LLC**
Legal Name

260 Airport Road, Whitefield, NH 03598

Address

603-837-9328

Telephone

Limited Liability Corporation-DE

Entity Type and State of Formation

Eligible Facility: Seller's 17.0 MW biomass fired generating facility which is located in Whitefield, New Hampshire, identified in the ISO-NE market settlement system with the Asset name DG Whitefield LLC and ID # 618.

Product: Unit Contingent Energy

Delivery Period and Term: The Term begins on the later of the date of the final NHPUC Determination that this Confirmation and its Attachment A are in conformity with RSA 362-H or February 1, 2019 and continues through July 31, 2019.

Energy Price: Effective during the Term, PSNH will compensate Seller for Unit Contingent Energy received at the Delivery Point in accordance with the pricing provisions set forth below. All prices for Unit Contingent Energy are expressed in terms of \$/MWh.

For the Delivery Period, PSNH will pay the "adjusted energy rate" defined by New Hampshire RSA 362-H:1, I, which will be either: (i) 80% of the difference between the competitively determined default energy rate, and the rate component for compliance with RSA 362-F, if included in the default energy rate, or (ii) 80% of the competitively determined default energy rate if the rate component for compliance with RSA 362-F is not included in the default energy rate.

Payment Schedule: The payment schedule shall be on a calendar month basis with approved invoices paid in accordance with the Governing Terms. If any portion of an invoice is disputed by Buyer (other than Buyer's reluctance to pay the adjusted energy rate for this energy), Buyer shall pay the undisputed portion in full and Buyer and Seller shall seek to resolve the disputed portion as promptly as possible.

Payment Terms: Notwithstanding anything in this Confirmation or Governing Terms to the contrary, this Transaction will be effectuated by designating PSNH, ID 50094, the Asset Owner for ISO-NE billing and settlement purposes. Payment will equal Delivered Energy times the Energy Price adjusted for any revenues or expenses readily identifiable in the ISO-NE bill resulting from ownership not included in "Market Energy Clearing Price," including any and all resettlements. All other revenue that PSNH receives from ISO-NE shall be credited to Seller by the 21st day of the next month.

Audit Rights: Buyer and Seller shall each have the right throughout the Term and for a period of six (6) months following when the ISO-NE energy market settlement is final, upon reasonable prior notice, to audit relevant records of the other party to the limited extent necessary to verify the basis for payments.

Delivery Point: The Delivery Point shall be at the interconnection between the Eligible Facility and Buyer's facilities as specified in Seller's existing Interconnection Agreement.

Scheduling: Seller will remain the designated Lead Market Participant – Asset and Lead Market Participant – Resource in accordance with ISO-NE rules and procedures. [PSNH need to explain how this clause conforms with previous clause requesting that PSNH be Asset Owner for ISO-NE billing and settlement purposes.]

Conditions:

This Confirmation and the transactions contemplated hereunder are subject to the following conditions:

- An order of the NHPUC reviewing this Confirmation and its Attachment A and finding them to be in conformity with RSA 362-H,
- PSNH's requirement to comply with the terms of RSA 362-H arise solely from RSA 362-H.
- The Facility shall maintain its status as an "Eligible facility" per RSA 362-H throughout such Term.

Cost Recovery:

As provided in RSA 362-H:2, V PSNH is eligible to recover the Transaction's difference between its energy purchase costs and the market clearing price through a nonbypassable delivery services charge applicable to all customer's in PSNH's service territory. The charge may include reasonable costs incurred by PSNH, and the charges shall be allocated using the customer class allocation percentages approved in NHPUC docket DE 14-238, order 25,920.

Definitions:

"Day-Ahead Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Real-Time Locational Marginal Price" shall be given the meaning given it in ISO NE Market Rule 1.

"Market Energy Clearing Price" means the Day-Ahead Locational Marginal Price and Real-Time Locational Marginal Price at the Pricing Node applicable to the asset in the ISO-NE energy market settlement for commitments in the day-ahead energy market and deviations in the real-time energy market, respectively.

"Unit Contingent" means, with respect to this Confirmation, that delivery or receipt of the Product from the Facility may be interrupted for any reason or for no reason by Seller, without liability on the part of either Party. However, Buyer shall be entitled to 100% of the output from the Facility during the Term of this Agreement.

"NHPUC Order" means receipt of a final, decision from the New Hampshire Public Utilities Commission, stating that it has reviewed this Confirmation and its Attachment A and finds they are in conformity with RSA 362-H.

"Delivered Energy" is the generation in MWh reported by ISO-NE for the Eligible Facility in the energy market settlement at the price node identified below:

Eligible Facility Generator Name	Asset ID #	Lead Participant	Price Node
DG Whitefield, LLC	618	Springfield Power, LLC	UN.WHITEFLD34.5WFPL

Governing Terms: All other terms and conditions not specified herein shall be in accordance with, and subject to, the attached Governing Terms which are incorporated by reference and made a part hereof. In the event of any inconsistency between the Governing Terms and the terms of a Confirmation, the terms of the Confirmation will govern for the Transaction.

Notices: Any notice or communication shall be provided to the following:

If to Buyer:

Primary Contact for PSNH:
 Frederick White
 860-665-5272 (phone)
 860-665-4583 (fax)
rick.white@eversource.com

Secondary Contact for PSNH:
 David Errichetti
 860-665-4519 (phone)
 860-665-4583 (fax)
david.errichetti@eversource.com

If to Seller:

Primary Contact:
 Edward Kent (name)
 856-206-0930 (phone)
 N/A (fax)
Kent-e@ewprc.com (email)

Secondary Contact:
 Sean Pak (name)
 856-206-0930 (phone)
 N/A (fax)
Pak-s@ewprc.com (email)

Seller executes this Draft Confirmation to express its indication of interest to accept the terms hereof and of the attached Governing Terms. A final, execution version of this Confirmation will be provided subsequent to PSNH selecting winning suppliers in its default energy service solicitation and developing proposed residential default energy service rates needed for inclusion in PSNH's filing to the NHPUC for the commission's review of this Confirmation and its Attachment A for conformity with RSA 362-H.

DG WHITEFIELD, LLC



BY _____

Name: *EDWARD KENT*

Title: *PRESIDENT*

Date *11/15/2018*

ATTACHMENT A
GOVERNING TERMS

**GOVERNING TERMS
FOR THE PURCHASE OF ENERGY BY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
PURSUANT TO THE LEGAL MANDATE CONTAINED IN
NEW HAMPSHIRE RSA CHAPTER 362-H**

This document sets forth the Governing Terms for purchases by Public Service Company of New Hampshire d/b/a Eversource Energy (“Buyer”) pursuant to the legal mandate set forth in New Hampshire RSA Chapter 362-H.

Each Transaction (as defined below) is subject to the signed Form of Confirmation and these Governing Terms, is mandated by force of law, is not a voluntary act of PSNH, and further is not a “Negotiated Rate or Term” as described in 18 CFR 292.301(b). New Hampshire RSA Chapter 362-H, which took effect on September 13, 2018 due to the Legislature’s override of the Governor’s veto, mandates that to retain and provide for generator fuel diversity, PSNH offer to purchase the net energy output of any “Eligible Facility” as defined by RSA 362-H:1,V,(a), located in its service territory, including the facility owned by Seller as set forth in the Confirmation (the “Facility”).

PSNH’s performance hereunder is expressly subject to and conditioned upon the terms herein and in the Confirmation and an order from the New Hampshire Public Utilities Commission (“NHPUC”) reviewing the Confirmation and Governing Terms and finding that provisions addressed by RSA 362-H and contained herein are in conformity with RSA 362-H.

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in these Governing Terms and not defined herein shall have the same meaning as ascribed to such terms under, first NH RSA Chapter 362-H, then by the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“**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.

“**Buyer**” shall mean Public Service Company of New Hampshire.

“**Day-Ahead Energy Market**” shall have the meaning set forth in the ISO-NE Rules.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Deliver” or **“Delivery”** shall mean the supply of Energy into Buyer’s ISO-NE account in accordance with the terms of these Governing Terms, the applicable Confirmation and the ISO-NE Rules.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean the point of interconnection between the Eligible Facility and Buyer’s facilities as specified in Seller’s existing Interconnection Agreement.

“Commission” shall mean the New Hampshire Public Utilities Commission, or NHPUC.

“Delivery Period” shall have the meaning as set forth in the Confirmation.

“Dispute” shall have the meaning set forth in Section 11.1 hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Energy” shall mean electric “energy,” as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in MWh in Eastern Prevailing Time at the Buyer’s meter used for billing and revenue determination.

“Energy Price” shall have the meaning as set forth in the Confirmation.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“Eligible Facility” shall have the meaning set forth in the Confirmation.

“FERC” shall mean the United States Federal Energy Regulatory Commission and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Good Utility Practice” shall mean any practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in New England during the relevant time period, or 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 is

made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility, or between Seller, the Interconnecting Utility and ISO-NE, as applicable, regarding the interconnection of the Facility to the transmission system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall mean the point of interconnection set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Participants Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE or the RTO, and governing wholesale power markets and transmission in New England, as such rules 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 NEPOOL 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.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“Late Payment Rate” shall have the meaning set forth in Section 5.3.

“**Law**” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“**Locational Marginal Price**” or “LMP” shall have the meaning set forth in the ISO-NE Tariff for the New Hampshire load zone

“**Meters**” shall have the meaning set forth in Section 4.6(a) hereof.

“**MW**” shall mean a megawatt.

“**MWh**” shall mean a megawatt-hour (one MWh shall equal 1,000 kilowatt-hours).

“**NEPOOL**” shall mean the New England Power Pool and any successor organization.

“**NEPOOL Participants Agreement**” shall mean the Second Restated New England Power Pool Agreement dated as of August 31, 2011, as amended and/or restated from time to time.

“**NERC**” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“**New England Control Area**” shall have the meaning as set forth in the ISO-NE Tariff.

“**Party**” and “**Parties**” shall mean the Buyer as defined herein and/or Seller, as defined in the Confirmation.

“**Permits**” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“**Person**” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“**Pool Transmission Facilities**” has the meaning given that term in the ISO-NE Rules.

“**Price**” shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and set forth on the Confirmation.

“**Products**” shall mean Energy only.

“Real-Time Energy Market” shall have the meaning as set forth in the ISO-NE Rules.

“Regulatory Approval” shall mean the NHPUC’s order reviewing the Governing Terms and the Confirmation and finding that they are in conformity with RSA 362-H, provided that such order does not include any conditions or modifications that are inconsistent with RSA 362-H.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“Schedule” or “Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Term at the Delivery Point.

“Seller” shall have the meaning as set forth in the Confirmation.

“Term” shall have the meaning set forth in the Confirmation.

“Transaction” means the sale of Energy produced by the Facility by Seller to Buyer as set forth in the Confirmation.

“Transmission Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; and (b) such other third parties from whom transmission services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

“Unit Contingent” shall mean that the Products are to be supplied only from the Facility and only to the extent that the Facility is generating energy, and as further defined in the Confirmation.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. These Governing Terms are effective for the Term.

2.2 Term. The Term of the Transaction is the period set forth in the Confirmation.

3. OPERATION OF THE FACILITY.

3.1 Compliance.

(a) General. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; and (ii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all

practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under these Governing Terms, including obligations related to the generation, Scheduling, interconnection, and transmission of Energy whether such requirements were imposed prior to or after the Term. Seller shall be solely responsible for registering as the "Generator Owner" and "Generator Operator" of the Facility with NERC (if applicable) and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under these Governing Terms, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, maintain and operate the Facility in accordance with Good Utility Practice and Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete operation and maintenance functions, so long as Seller maintains overall control over the operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) ISO-NE Status. Seller shall, at all times during the Term, either: (i) be an ISO-NE "Market Participant" pursuant to the ISO-NE Rules; or (ii) have entered into an agreement with a Market Participant that shall perform all of Seller's ISO-NE- related obligations in connection with the Facility and these Governing Terms.

(f) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage required under the Facility's existing Interconnection Agreement and with the deductibles that are customary for a generating facility of the type and size of the Facility and as otherwise legally required. Within thirty (30) days prior to the start of the initial sale under the Confirmation, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer with thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(g) Contacts. Seller shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Transaction.

(h) Compliance with Law. Without limiting the generality of any other provision of these Governing Terms, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies,

criteria, guidelines and requirements imposed by FERC and any other Governmental Entity,

whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law. Upon Buyer's request, Seller shall provide Buyer information pertaining to Facility emissions, fuel and operations, and information requested by Buyer to comply with Buyer's disclosure obligations. To the extent Buyer is subject to any other certification or reporting requirement with respect to the Products, Seller shall promptly provide such information to Buyer.

(i) FERC Status. Seller shall obtain and maintain any requisite authority to sell the output of the Facility under applicable law.

(j) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.2 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, consistent with all standards and requirements set forth by FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. **DELIVERY OF PRODUCTS**

4.1 Obligation to Sell and Purchase Products.

(a) Throughout the Term, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Products in accordance with the terms and conditions of these Governing Terms and the Confirmation. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are Unit Contingent. Seller agrees that Seller will not curtail or otherwise reduce deliveries of the Products in order to sell such Products to other purchasers during the Term.

(b) Throughout the Term, Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with these Governing Terms, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market, as directed by Buyer and consistent with prevailing electric industry practices at the time, in such a manner that Buyer may resell such Energy in the Day-Ahead Energy Market or Real-Time Energy Market at the Market Price, as applicable, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Day-Ahead Energy Market or Real-Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission system).

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission Provider and caused by Seller's noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, Seller or the party with whom Seller contracts pursuant to Section 3.5(e) shall at all times during the Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred. To the extent Buyer incurs such costs, charges, penalties or losses which are the responsibility of Seller, the same shall be paid by Seller to Buyer.

4.3 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to the Delivery Point. Seller shall also be responsible for all charges, fees and losses required for Delivery of Energy from the Facility to the Delivery Point, including but not limited to (1) all non-PTF and/or distribution system losses, (2) all transmission and/or distribution interconnection charges associated with the Facility, and (3) the cost of Delivery of the Products to the Delivery Point, including all related administrative fees and non-PTF and/or distribution wheeling charges. Seller shall also apply for and schedule all such services.

(c) Buyer shall be responsible, if appropriated assessed, for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-

NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under these Governing Terms from and after the Delivery Point.

4.4 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense at least once each Contract Year. All Meters used to provide data for the computation of payments shall be sealed and Seller shall break the seal only when such Meters are to be inspected and tested (or adjusted) in accordance with this Section 4.6. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than one percent (1%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. Buyer shall have the right to inspect and test any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than one percent (1%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The meter used by Buyer (or its Affiliate) for billing and revenue purposes shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller's requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Purchase Cost for Products. All Products Delivered to Buyer in accordance with these Governing Terms shall be purchased as specified in the Confirmation.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under these Governing Terms. On or before the twenty-first (21st) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days after receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

(i) All invoices rendered under these Governing Terms shall be subject to adjustment after the end of each month in order to true-up charges based on changes resulting from recent ISO-NE billing statements or revisions, if any, to previous ISO-NE billing statements. If ISO-NE resettles any invoice which relates to the Products sold under these Governing Terms and (a) any charges thereunder are the responsibility of the other Party under these Governing Terms or (b) any credits issued thereunder would be due to the other Party under these Governing Terms, then the Party receiving the invoice from ISO-NE shall in the case of (a) above invoice the other Party or in the case of (b) above pay the amount due to the other Party. Any invoices issued or amounts due pursuant to this Section shall be invoiced or paid as provided

in this Section 5.2.

- (ii) A Party may, in good faith, dispute the accuracy of any invoice or any adjustment to an invoice rendered under these Governing Terms, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under these Governing Terms on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under these Governing Terms, including any related damages calculated pursuant to these Governing Terms, interest, and payments or credits, may 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, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “Late Payment Rate”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes, or to receive any other grant or subsidy from a Governmental Entity or other Person. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits, grants or other subsidies or any particular accounting, reporting or tax treatment during the Term.

6. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

6.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of New Hampshire. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power to perform its obligations under these Governing Terms.

(b) Due Authorization; No Conflicts. Performance by Buyer of these Governing Terms, is subject to the receipt of the Regulatory Approval.

6.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in the State of New Hampshire. Seller has all requisite power and authority to execute, deliver, and perform its obligations under these Governing Terms.

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds all rights and entitlements necessary to own and operate the Facility and to deliver the Products to the Buyer in accordance with these Governing Terms.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of these Governing Terms, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. These Governing Terms has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) Consents and Approvals. The execution, delivery and performance by Seller of its obligations under these Governing Terms do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect.

(f) Title to Products. Seller has and shall have good and marketable title to all Products sold and Delivered to Buyer under these Governing Terms, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under these Governing Terms.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under these Governing Terms.

6.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

7. REGULATORY APPROVAL.

The obligations of the Parties to perform these Governing Terms are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval.

8. BREACHES; REMEDIES

8.1 Events of Default by Either Party. It shall constitute an event of default (“Event of Default”) by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to these Governing Terms, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party’s property, which is not dismissed within sixty (60) days; or

(d) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under these Governing Terms.

8.2 Events of Default by Seller. In addition to the Events of Default described in Section 8.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under these Governing Terms or on Buyer or Buyer's ability to receive the benefits under these Governing Terms, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(c) Failure to Maintain Material Contracts. The failure of Seller to maintain in effect any material agreements required to Deliver the Energy committed to Buyer hereunder to the Delivery Point, including the Interconnection Agreement, provided that if Seller's failure does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under these Governing Terms, Seller may cure such failure within thirty (30) days of its occurrence; or

(d) Abandonment. On or after the Commercial Operation date, the permanent relinquishment by Seller of all of its possession and control of the Facility, other than a sale or transfer of the Facility and the Governing Terms and Confirmation; or

(e) Assignment. The assignment of these Governing Terms by Seller, except as permitted in accordance with Article 12.

(f) Failure to Deliver. Seller's failure to deliver Products to Buyer in accordance with these Governing Terms and the applicable Confirmation.

8.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under these General Terms, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in these Governing Terms or, to the extent not inconsistent with the terms of these Governing

Terms, at law, including, without limitation, the termination right set forth in Section 8.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under these Governing Terms.

(b) Termination. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate these Governing Terms at its sole discretion by providing written notice of such termination to the Defaulting Party. Such termination shall be with a full reservation of the Non-Defaulting Party's rights and remedies under law and equity.

(c) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THESE GOVERNING TERMS SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

9. FORCE MAJEURE

9.1 Force Majeure.

(a) The term "**Force Majeure**" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under these Governing Terms. Under no circumstances shall Force Majeure include (v) any full or partial

curtailment in the electric output of the Facility that is caused by or arises from a mechanical or equipment breakdown or other mishap or events or conditions attributable to normal wear and tear or flaws, unless such curtailment or mishap is caused by one of the following: acts of God, sudden actions of the elements, including floods, hurricanes or tornados; sabotage; terrorism; war; riots; and emergency orders issued by a Governmental Entity, (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in these Governing Terms, or (z) Buyer's ability to procure the Products at a price lower than that set out in these Governing Terms. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under these Governing Terms, such performance (other than the obligation to make payment of amounts due and payable under these Governing Terms) shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under these Governing Terms, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

10. DISPUTE RESOLUTION

10.1 Dispute Resolution. In the event of any dispute, controversy or claim between the Parties arising out of or relating to these Governing Terms (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior

management of the Parties, then either Party desiring formal dispute resolution shall petition the NHPUC for such resolution; provided, however, if the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before FERC.

11. INDEMNIFICATION

11.1 Seller shall indemnify, defend and hold Buyer and its partners, shareholders, directors, 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 arising from or related to Seller's execution, delivery or performance of these Governing Terms, or Seller's negligence, gross negligence, or willful misconduct, or Seller's failure to satisfy any obligation or liability under these Governing Terms.

11.2 Failure to Defend. If Seller fails to assume the defense of a claim meriting indemnification, Buyer may at the expense of the Seller contest, settle or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of such indemnifying Party or, absent such consent, written consent of Buyer's counsel that such claim is meritorious or warrants settlement

12. ASSIGNMENT AND CHANGE OF CONTROL

The Transaction governed by these Governing Terms may not be assigned by either party except to the extent associated with a merger or consolidation of a Party or in connection with Seller's sale or transfer of its interest (or any part thereof) in the Facility.

13. TITLE; RISK OF LOSS

Title to and risk of loss related to the Delivered Product shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Seller warrants that it shall deliver to Buyer the Products free and clear of all liens and claims therein or thereto by any Person.

14. AUDIT

14.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under these Governing Terms, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to these Governing Terms. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

15. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) by reputable overnight courier; in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing, as set forth in the Confirmation.

16. WAIVER AND MODIFICATION

These Governing Terms may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of these Governing Terms shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of these Governing Terms shall not be construed as a waiver of or acquiescence in or to such provision.

17. INTERPRETATION

17.1 Choice of Law. Interpretation and performance of these Governing Terms 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).

17.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of these Governing Terms. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of these Governing Terms. The words “hereof” and “hereunder” shall refer to these Governing Terms as a whole and not to any particular provision of these Governing Terms.

17.3 Change in ISO-NE Rules and Practices. These Governing Terms are subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of these Governing Terms, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Buyer, in consultation with Seller, shall modify these Governing Terms and submit the modified document to the NHPUC for its review for conformity with RSA 362-H. The intent is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to these Governing Terms, or (ii) the Price.

17.4 Change in Law or Buyer's Accounting Treatment. If, during the Term of these Governing Terms, there is a change in Law or accounting standards or rules or a change in the interpretation of applicability thereof that would result in adverse balance sheet or creditworthiness impacts on Buyer associated with these Governing Terms or the amounts paid for Products purchased hereunder, the Buyer shall amend or clarify these Governing Terms to avoid or significantly mitigate such impacts and submit such amendments or clarifications to the NHPUC for review for conformity with RSA 362-H .

18. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of the Form of Confirmation may be executed, and each shall have the same force and effect as an original. Facsimile signatures on any notice or other instrument delivered under these Governing Terms shall have the same force and effect as original signatures.

19. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of these Governing Terms, nothing in these Governing Terms nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to these Governing Terms.

20. SEVERABILITY

If any term or provision of these Governing Terms 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 these Governing Terms 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.

21. INDEPENDENT CONTRACTOR

Nothing in these Governing Terms shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be

the agent of the other Party for any purpose by reason of these Governing Terms, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

22. ENTIRE RELATIONSHIP

These Governing Terms and the Confirmation shall govern the entire relationship between the Parties hereto relating to the mandates set forth in NH RSA Chapter 362-H and shall supersede all prior agreements and communications.

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power
Production or Cogeneration Facility


General

Questions about completing this form should be sent to Form556@ferc.gov. Information about the Commission's QF program, answers to frequently asked questions about QF requirements or completing this form, and contact information for QF program staff are available at the Commission's QF website, www.ferc.gov/QF. The Commission's QF website also provides links to the Commission's QF regulations (18 C.F.R. § 131.80 and Part 292), as well as other statutes and orders pertaining to the Commission's QF program.

Who Must File

Any applicant seeking QF status or recertification of QF status for a generating facility with a net power production capacity (as determined in lines 7a through 7g below) greater than 1000 kW must file a self-certification or an application for Commission certification of QF status, which includes a properly completed Form 556. Any applicant seeking QF status for a generating facility with a net power production capacity 1000 kW or less is exempt from the certification requirement, and is therefore not required to complete or file a Form 556. See 18 C.F.R. § 292.203.

How to Complete the Form 556

This form is intended to be completed by responding to the items in the order they are presented, according to the instructions given. If you need to back-track, you may need to clear certain responses before you will be allowed to change other responses made previously in the form. If you experience problems, click on the nearest help button () for assistance, or contact Commission staff at Form556@ferc.gov.

Certain lines in this form will be automatically calculated based on responses to previous lines, with the relevant formulas shown. You must respond to all of the previous lines within a section before the results of an automatically calculated field will be displayed. If you disagree with the results of any automatic calculation on this form, contact Commission staff at Form556@ferc.gov to discuss the discrepancy before filing.

You must complete all lines in this form unless instructed otherwise. Do not alter this form or save this form in a different format. Incomplete or altered forms, or forms saved in formats other than PDF, will be rejected.

How to File a Completed Form 556

Applicants are required to file their Form 556 electronically through the Commission's eFiling website (see instructions on page 2). By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

If you are simultaneously filing both a waiver request and a Form 556 as part of an application for Commission certification, see the "Waiver Requests" section on page 3 for more information on how to file.

Paperwork Reduction Act Notice

This form is approved by the Office of Management and Budget (OMB Control No. 1902-0075, expiration 05/31/2013). Compliance with the information requirements established by the FERC Form No. 556 is required to obtain or maintain status as a QF. See 18 C.F.R. § 131.80 and Part 292. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The estimated burden for completing the FERC Form No. 556, including gathering and reporting information, is as follows: 3 hours for self-certification of a small power production facility, 8 hours for self-certifications of a cogeneration facility, 6 hours for an application for Commission certification of a small power production facility, and 50 hours for an application for Commission certification of a cogeneration facility. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Information Clearance Officer, Office of the Executive Director (ED-32), Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oir_submission@omb.eop.gov). Include the Control No. 1902-0075 in any correspondence.

Electronic Filing (eFiling)

To electronically file your Form 556, visit the Commission's QF website at www.ferc.gov/QF and click the eFiling link.

If you are eFiling your first document, you will need to register with your name, email address, mailing address, and phone number. If you are registering on behalf of an employer, then you will also need to provide the employer name, alternate contact name, alternate contact phone number and and alternate contact email.

Once you are registered, log in to eFiling with your registered email address and the password that you created at registration. Follow the instructions. When prompted, select one of the following QF-related filing types, as appropriate, from the Electric or General filing category.

Filing category	Filing Type as listed in eFiling	Description
Electric	(Fee) Application for Commission Cert. as Cogeneration QF	Use to submit an application for Commission certification or Commission recertification of a cogeneration facility as a QF.
	(Fee) Application for Commission Cert. as Small Power QF	Use to submit an application for Commission certification or Commission recertification of a small power production facility as a QF.
	Self-Certification Notice (QF, EG, FC)	Use to submit a notice of self-certification of your facility (cogeneration or small power production) as a QF.
	Self-Recertification of Qualifying Facility (QF)	Use to submit a notice of self-recertification of your facility (cogeneration or small power production) as a QF.
	Supplemental Information or Request	Use to correct or supplement a Form 556 that was submitted with errors or omissions, or for which Commission staff has requested additional information. Do <i>not</i> use this filing type to report new changes to a facility or its ownership; rather, use a self-recertification or Commission recertification to report such changes.
General	(Fee) Petition for Declaratory Order (not under FPA Part 1)	Use to submit a petition for declaratory order granting a waiver of Commission QF regulations pursuant to 18 C.F.R. §§ 292.204(a) (3) and/or 292.205(c). A Form 556 is not required for a petition for declaratory order unless Commission recertification is being requested as part of the petition.

You will be prompted to submit your filing fee, if applicable, during the electronic submission process. Filing fees can be paid via electronic bank account debit or credit card.

During the eFiling process, you will be prompted to select your file(s) for upload from your computer.

Filing Fee

No filing fee is required if you are submitting a self-certification or self-recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(a).

A filing fee is required if you are filing either of the following:

- (1) an application for Commission certification or recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(b), or
- (2) a petition for declaratory order granting waiver pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c).

The current fees for applications for Commission certifications and petitions for declaratory order can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Fee Schedule link.

You will be prompted to submit your filing fee, if applicable, during the electronic filing process described on page 2.

Required Notice to Utilities and State Regulatory Authorities

Pursuant to 18 C.F.R. § 292.207(a)(ii), you must provide a copy of your self-certification or request for Commission certification to the utilities with which the facility will interconnect and/or transact, as well as to the State regulatory authorities of the states in which your facility and those utilities reside. Links to information about the regulatory authorities in various states can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Notice Requirements link.

What to Expect From the Commission After You File

An applicant filing a Form 556 electronically will receive an email message acknowledging receipt of the filing and showing the docket number assigned to the filing. Such email is typically sent within one business day, but may be delayed pending confirmation by the Secretary of the Commission of the contents of the filing.

An applicant submitting a self-certification of QF status should expect to receive no documents from the Commission, other than the electronic acknowledgement of receipt described above. Consistent with its name, a self-certification is a certification *by the applicant itself* that the facility meets the relevant requirements for QF status, and does not involve a determination by the Commission as to the status of the facility. An acknowledgement of receipt of a self-certification, in particular, does not represent a determination by the Commission with regard to the QF status of the facility. An applicant self-certifying may, however, receive a rejection, revocation or deficiency letter if its application is found, during periodic compliance reviews, not to comply with the relevant requirements.

An applicant submitting a request for Commission certification will receive an order either granting or denying certification of QF status, or a letter requesting additional information or rejecting the application. Pursuant to 18 C.F.R. § 292.207(b)(3), the Commission must act on an application for Commission certification within 90 days of the later of the filing date of the application or the filing date of a supplement, amendment or other change to the application.

Waiver Requests

18 C.F.R. § 292.204(a)(3) allows an applicant to request a waiver to modify the method of calculation pursuant to 18 C.F.R. § 292.204(a)(2) to determine if two facilities are considered to be located at the same site, for good cause. 18 C.F.R. § 292.205(c) allows an applicant to request waiver of the requirements of 18 C.F.R. §§ 292.205(a) and (b) for operating and efficiency upon a showing that the facility will produce significant energy savings. A request for waiver of these requirements must be submitted as a petition for declaratory order, with the appropriate filing fee for a petition for declaratory order. Applicants requesting Commission recertification as part of a request for waiver of one of these requirements should electronically submit their completed Form 556 along with their petition for declaratory order, rather than filing their Form 556 as a separate request for Commission recertification. Only the filing fee for the petition for declaratory order must be paid to cover both the waiver request and the request for recertification *if such requests are made simultaneously*.

18 C.F.R. § 292.203(d)(2) allows an applicant to request a waiver of the Form 556 filing requirements, for good cause. Applicants filing a petition for declaratory order requesting a waiver under 18 C.F.R. § 292.203(d)(2) do not need to complete or submit a Form 556 with their petition.

Geographic Coordinates

If a street address does not exist for your facility, then line 3c of the Form 556 requires you to report your facility's geographic coordinates (latitude and longitude). Geographic coordinates may be obtained from several different sources. You can find links to online services that show latitude and longitude coordinates on online maps by visiting the Commission's QF webpage at www.ferc.gov/QF and clicking the Geographic Coordinates link. You may also be able to obtain your geographic coordinates from a GPS device, Google Earth (available free at <http://earth.google.com>), a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

Filing Privileged Data or Critical Energy Infrastructure Information in a Form 556

The Commission's regulations provide procedures for applicants to either (1) request that any information submitted with a Form 556 be given privileged treatment because the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and should be withheld from public disclosure; or (2) identify any documents containing critical energy infrastructure information (CEII) as defined in 18 C.F.R. § 388.113 that should not be made public.

If you are seeking privileged treatment or CEII status for any data in your Form 556, then you must follow the procedures in 18 C.F.R. § 388.112. See www.ferc.gov/help/filing-guide/file-ceii.asp for more information.

Among other things (see 18 C.F.R. § 388.112 for other requirements), applicants seeking privileged treatment or CEII status for data submitted in a Form 556 must prepare and file both (1) a complete version of the Form 556 (containing the privileged and/or CEII data), and (2) a public version of the Form 556 (with the privileged and/or CEII data redacted). Applicants preparing and filing these different versions of their Form 556 must indicate below the security designation of this version of their document. If you are *not* seeking privileged treatment or CEII status for any of your Form 556 data, then you should not respond to any of the items on this page.

<p>Non-Public: Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This non-public version of the applicant's Form 556 contains all data, including the data that is redacted in the (separate) public version of the applicant's Form 556.</p>
<p>Public (redacted): Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines <input type="checkbox"/> indicated below. This public version of the applicants's Form 556 contains all data <u>except</u> for data from the lines indicated below, which has been redacted.</p>
<p>Privileged: Indicate below which lines of your form contain data for which you are seeking privileged treatment</p>
<p>Critical Energy Infrastructure Information (CEII): Indicate below which lines of your form contain data for which you are seeking CEII status</p>

The eFiling process described on page 2 will allow you to identify which versions of the electronic documents you submit are public, privileged and/or CEII. The filenames for such documents should begin with "Public", "Priv", or "CEII", as applicable, to clearly indicate the security designation of the file. Both versions of the Form 556 should be unaltered PDF copies of the Form 556, as available for download from www.ferc.gov/QF. To redact data from the public copy of the submittal, simply omit the relevant data from the Form. For numerical fields, leave the redacted fields blank. For text fields, complete as much of the field as possible, and replace the redacted portions of the field with the word "REDACTED" in brackets. Be sure to identify above all fields which contain data for which you are seeking non-public status.

The Commission is not responsible for detecting or correcting filer errors, including those errors related to security designation. If your documents contain sensitive information, make sure they are filed using the proper security designation.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # 1902-0075
Expiration 5/31/2013

Form 556

Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

Application Information

1a Full name of applicant (legal entity on whose behalf qualifying facility status is sought for this facility) DG Whitefield LLC		
1b Applicant street address 600 West Broadway Suite 1600		
1c City San Diego	1d State/province CA	
1e Postal code 92101	1f Country (if not United States)	1g Telephone number (619) 232-6564
1h Has the instant facility ever previously been certified as a QF? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
1i If yes, provide the docket number of the last known QF filing pertaining to this facility: QF <u>84</u> - <u>444</u> - <u>005</u>		
1j Under which certification process is the applicant making this filing? <input checked="" type="checkbox"/> Notice of self-certification (see note below) <input type="checkbox"/> Application for Commission certification (requires filing fee; see "Filing Fee" section on page 3) Note: a notice of self-certification is a notice by the applicant itself that its facility complies with the requirements for QF status. A notice of self-certification does not establish a proceeding, and the Commission does not review a notice of self-certification to verify compliance. See the "What to Expect From the Commission After You File" section on page 3 for more information.		
1k What type(s) of QF status is the applicant seeking for its facility? (check all that apply) <input checked="" type="checkbox"/> Qualifying small power production facility status <input type="checkbox"/> Qualifying cogeneration facility status		
1l What is the purpose and expected effective date(s) of this filing? <input type="checkbox"/> Original certification; facility expected to be installed by _____ and to begin operation on _____ <input checked="" type="checkbox"/> Change(s) to a previously certified facility to be effective on <u>2/1/12</u> (identify type(s) of change(s) below, and describe change(s) in the Miscellaneous section starting on page 19) <input type="checkbox"/> Name change and/or other administrative change(s) <input checked="" type="checkbox"/> Change in ownership <input type="checkbox"/> Change(s) affecting plant equipment, fuel use, power production capacity and/or cogeneration thermal output <input type="checkbox"/> Supplement or correction to a previous filing submitted on _____ (describe the supplement or correction in the Miscellaneous section starting on page 19)		
1m If any of the following three statements is true, check the box(es) that describe your situation and complete the form to the extent possible, explaining any special circumstances in the Miscellaneous section starting on page 19. <input type="checkbox"/> The instant facility complies with the Commission's QF requirements by virtue of a waiver of certain regulations previously granted by the Commission in an order dated _____ (specify any other relevant waiver orders in the Miscellaneous section starting on page 19) <input type="checkbox"/> The instant facility would comply with the Commission's QF requirements if a petition for waiver submitted concurrently with this application is granted <input type="checkbox"/> The instant facility complies with the Commission's regulations, but has special circumstances, such as the employment of unique or innovative technologies not contemplated by the structure of this form, that make the demonstration of compliance via this form difficult or impossible (describe in Misc. section starting on p. 19)		

Contact Information	2a Name of contact person John Wood		2b Telephone number (619) 232-6564	
	2c Which of the following describes the contact person's relationship to the applicant? (check one) <input type="checkbox"/> Applicant (self) <input type="checkbox"/> Employee, owner or partner of applicant authorized to represent the applicant <input checked="" type="checkbox"/> Employee of a company affiliated with the applicant authorized to represent the applicant on this matter <input type="checkbox"/> Lawyer, consultant, or other representative authorized to represent the applicant on this matter			
	2d Company or organization name (if applicant is an individual, check here and skip to line 2e) <input type="checkbox"/> EWP Renewable Corporation			
	2e Street address (if same as Applicant, check here and skip to line 3a) <input type="checkbox"/> 600 West Broadway, Suite 1600			
	2f City San Diego		2g State/province CA	
	2h Postal code 92101		2i Country (if not United States)	
Facility Identification and Location	3a Facility name DG Whitefield LLC			
	3b Street address (if a street address does not exist for the facility, check here and skip to line 3c) <input type="checkbox"/> 260 Airport Road			
	3c Geographic coordinates: If you indicated that no street address exists for your facility by checking the box in line 3b, then you must specify the latitude and longitude coordinates of the facility in degrees (to three decimal places). Use the following formula to convert to decimal degrees from degrees, minutes and seconds: decimal degrees = degrees + (minutes/60) + (seconds/3600). See the "Geographic Coordinates" section on page 4 for help. If you provided a street address for your facility in line 3b, then specifying the geographic coordinates below is optional. Longitude <input type="checkbox"/> East (+) _____ degrees Latitude <input type="checkbox"/> North (+) _____ degrees <input type="checkbox"/> West (-) _____ degrees <input type="checkbox"/> South (-) _____ degrees			
	3d City (if unincorporated, check here and enter nearest city) <input type="checkbox"/> Whitefield		3e State/province NH	
	3f County (or check here for independent city) <input type="checkbox"/> Coos		3g Country (if not United States)	
Transacting Utilities	Identify the electric utilities that are contemplated to transact with the facility.			
	4a Identify utility interconnecting with the facility Public Service of New Hampshire			
	4b Identify utilities providing wheeling service or check here if none <input type="checkbox"/> Public Service of New Hampshire			
	4c Identify utilities purchasing the useful electric power output or check here if none <input type="checkbox"/> Public Service of New Hampshire; Constellation Energy Commodities Group			
	4d Identify utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service or check here if none <input type="checkbox"/> Public Service of New Hampshire			

Ownership and Operation

5a Direct ownership as of effective date or operation date: Identify all direct owners of the facility holding at least 10 percent equity interest. For each identified owner, also (1) indicate whether that owner is an electric utility, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or a holding company, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)), and (2) for owners which are electric utilities or holding companies, provide the percentage of equity interest in the facility held by that owner. If no direct owners hold at least 10 percent equity interest in the facility, then provide the required information for the two direct owners with the largest equity interest in the facility.

Full legal names of direct owners	Electric utility or holding company	If Yes, % equity interest
1) <u>DG Whitefield LLC (see also "Miscellaneous" section)</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>100</u> %
2) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
3) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
4) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
5) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
6) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
7) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
8) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
9) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %
10) _____	Yes <input type="checkbox"/> No <input type="checkbox"/>	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5b Upstream (i.e., indirect) ownership as of effective date or operation date: Identify all upstream (i.e., indirect) owners of the facility that both (1) hold at least 10 percent equity interest in the facility, and (2) are electric utilities, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or holding companies, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)). Also provide the percentage of equity interest in the facility held by such owners. (Note that, because upstream owners may be subsidiaries of one another, total percent equity interest reported may exceed 100 percent.)

Check here if no such upstream owners exist.

Full legal names of electric utility or holding company upstream owners	% equity interest
1) <u>EWPRC Biomass Holdings, LLC</u>	<u>100</u> %
2) <u>EWP Renewable Corporation</u>	<u>100</u> %
3) <u>EWP America, Inc.</u>	<u>100</u> %
4) <u>Korea East-West Power Company, Ltd.</u>	<u>100</u> %
5) <u>Korea Electric Power (see also "Miscellaneous" section)</u>	<u>100</u> %
6) _____	_____ %
7) _____	_____ %
8) _____	_____ %
9) _____	_____ %
10) _____	_____ %

Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5c Identify the facility operator

EWP Renewable Corporation



Energy Input

6a Describe the primary energy input: (check one main category and, if applicable, one subcategory)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Biomass (specify) | <input type="checkbox"/> Renewable resources (specify) | <input type="checkbox"/> Geothermal |
| <input type="checkbox"/> Landfill gas | <input type="checkbox"/> Hydro power - river | <input type="checkbox"/> Fossil fuel (specify) |
| <input type="checkbox"/> Manure digester gas | <input type="checkbox"/> Hydro power - tidal | <input type="checkbox"/> Coal (not waste) |
| <input type="checkbox"/> Municipal solid waste | <input type="checkbox"/> Hydro power - wave | <input type="checkbox"/> Fuel oil/diesel |
| <input type="checkbox"/> Sewage digester gas | <input type="checkbox"/> Solar - photovoltaic | <input type="checkbox"/> Natural gas (not waste) |
| <input checked="" type="checkbox"/> Wood | <input type="checkbox"/> Solar - thermal | <input type="checkbox"/> Other fossil fuel (describe on page 19) |
| <input type="checkbox"/> Other biomass (describe on page 19) | <input type="checkbox"/> Wind | |
| <input type="checkbox"/> Waste (specify type below in line 6b) | <input type="checkbox"/> Other renewable resource (describe on page 19) | <input type="checkbox"/> Other (describe on page 19) |

6b If you specified "waste" as the primary energy input in line 6a, indicate the type of waste fuel used: (check one)

- Waste fuel listed in 18 C.F.R. § 292.202(b) (specify one of the following)
- Anthracite culm produced prior to July 23, 1985
 - Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more
 - Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more
 - Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste
 - Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste
 - Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation
 - Gaseous fuels (except natural gas and synthetic gas from coal) (describe on page 19)
 - Waste natural gas from gas or oil wells (describe on page 19 how the gas meets the requirements of 18 C.F.R. § 2.400 for waste natural gas; include with your filing any materials necessary to demonstrate compliance with 18 C.F.R. § 2.400)
 - Materials that a government agency has certified for disposal by combustion (describe on page 19)
 - Heat from exothermic reactions (describe on page 19)
 - Residual heat (describe on page 19)
 - Used rubber tires
 - Plastic materials
 - Refinery off-gas
 - Petroleum coke
- Other waste energy input that has little or no commercial value and exists in the absence of the qualifying facility industry (describe in the Miscellaneous section starting on page 19; include a discussion of the fuel's lack of commercial value and existence in the absence of the qualifying facility industry)

6c Provide the average energy input, calculated on a calendar year basis, in terms of Btu/h for the following fossil fuel energy inputs, and provide the related percentage of the total average annual energy input to the facility (18 C.F.R. § 292.202(j)). For any oil or natural gas fuel, use lower heating value (18 C.F.R. § 292.202(m)).

Fuel	Annual average energy input for specified fuel	Percentage of total annual energy input
Natural gas	0 Btu/h	0 %
Oil-based fuels	0 Btu/h	0 %
Coal	0 Btu/h	0 %

Technical Facility Information

Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery by completing the worksheet below. Respond to all items. If any of the parasitic loads and/or losses identified in lines 7b through 7e are negligible, enter zero for those lines.

7a The maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions	19,700 kW
7b Parasitic station power used at the facility to run equipment which is necessary and integral to the power production process (boiler feed pumps, fans/blowers, office or maintenance buildings directly related to the operation of the power generating facility, etc.). If this facility includes non-power production processes (for instance, power consumed by a cogeneration facility's thermal host) , do not include any power consumed by the non-power production activities in your reported parasitic station power.	2,000 kW
7c Electrical losses in interconnection transformers	0 kW
7d Electrical losses in AC/DC conversion equipment, if any	0 kW
7e Other interconnection losses in power lines or facilities (other than transformers and AC/DC conversion equipment) between the terminals of the generator(s) and the point of interconnection with the utility	0 kW
7f Total deductions from gross power production capacity = 7b + 7c + 7d + 7e	2,000.0 kW
7g Maximum net power production capacity = 7a - 7f	17,700.0 kW

7h Description of facility and primary components: Describe the facility and its operation. Identify all boilers, heat recovery steam generators, prime movers (any mechanical equipment driving an electric generator), electrical generators, photovoltaic solar equipment, fuel cell equipment and/or other primary power generation equipment used in the facility. Descriptions of components should include (as applicable) specifications of the nominal capacities for mechanical output, electrical output, or steam generation of the identified equipment. For each piece of equipment identified, clearly indicate how many pieces of that type of equipment are included in the plant, and which components are normally operating or normally in standby mode. Provide a description of how the components operate as a system. Applicants for cogeneration facilities do not need to describe operations of systems that are clearly depicted on and easily understandable from a cogeneration facility's attached mass and heat balance diagram; however, such applicants should provide any necessary description needed to understand the sequential operation of the facility depicted in their mass and heat balance diagram. If additional space is needed, continue in the Miscellaneous section starting on page 19.

The Facility is a small power production facility utilizing waste wood as a biomass fuel. The Facility consists of a boiler and several buildings. The Applicant utilizes a 19.7 MW turbine generator and the necessary systems and appurtenances required to produce electrical energy for sale to a local public utility and to interconnect to a local public utility.



Information Required for Small Power Production Facility

If you indicated in line 1k that you are seeking qualifying small power production facility status for your facility, then you must respond to the items on this page. Otherwise, skip page 10.

Certification of Compliance with Size Limitations	Pursuant to 18 C.F.R. § 292.204(a), the power production capacity of any small power production facility, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts. To demonstrate compliance with this size limitation, or to demonstrate that your facility is exempt from this size limitation under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575, 104 Stat. 2834 (1990) <i>as amended by</i> Pub. L. 102-46, 105 Stat. 249 (1991)), respond to lines 8a through 8e below (as applicable).																
	8a Identify any facilities with electrical generating equipment located within 1 mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b, or their affiliates, holds at least a 5 percent equity interest. Check here if no such facilities exist. <input checked="" type="checkbox"/>																
	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:30%; text-align:center;">Facility location (city or county, state)</th> <th style="width:20%; text-align:center;">Root docket # (if any)</th> <th style="width:30%; text-align:center;">Common owner(s)</th> <th style="width:20%; text-align:center;">Maximum net power production capacity</th> </tr> </thead> <tbody> <tr> <td>1) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>2) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> <tr> <td>3) _____</td> <td>QF - _____</td> <td>_____</td> <td style="text-align:right;">kW</td> </tr> </tbody> </table>	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity	1) _____	QF - _____	_____	kW	2) _____	QF - _____	_____	kW	3) _____	QF - _____	_____	kW
	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity													
	1) _____	QF - _____	_____	kW													
	2) _____	QF - _____	_____	kW													
3) _____	QF - _____	_____	kW														
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed																	
8b The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act) provides exemption from the size limitations in 18 C.F.R. § 292.204(a) for certain facilities that were certified prior to 1995. Are you seeking exemption from the size limitations in 18 C.F.R. § 292.204(a) by virtue of the Incentives Act? <input checked="" type="checkbox"/> Yes (continue at line 8c below) <input type="checkbox"/> No (skip lines 8c through 8e)																	
8c Was the original notice of self-certification or application for Commission certification of the facility filed on or before December 31, 1994? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																	
8d Did construction of the facility commence on or before December 31, 1999? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>																	
8e If you answered No in line 8d, indicate whether reasonable diligence was exercised toward the completion of the facility, taking into account all factors relevant to construction? Yes <input type="checkbox"/> No <input type="checkbox"/> If you answered Yes, provide a brief narrative explanation in the Miscellaneous section starting on page 19 of the construction timeline (in particular, describe why construction started so long after the facility was certified) and the diligence exercised toward completion of the facility.																	
Certification of Compliance with Fuel Use Requirements	Pursuant to 18 C.F.R. § 292.204(b), qualifying small power production facilities may use fossil fuels, in minimal amounts, for only the following purposes: ignition; start-up; testing; flame stabilization; control use; alleviation or prevention of unanticipated equipment outages; and alleviation or prevention of emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. The amount of fossil fuels used for these purposes may not exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																
	9a Certification of compliance with 18 C.F.R. § 292.204(b) with respect to uses of fossil fuel: <input checked="" type="checkbox"/> Applicant certifies that the facility will use fossil fuels <i>exclusively</i> for the purposes listed above.																
	9b Certification of compliance with 18 C.F.R. § 292.204(b) with respect to amount of fossil fuel used annually: <input checked="" type="checkbox"/> Applicant certifies that the amount of fossil fuel used at the facility will not, in aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.																



Information Required for Cogeneration Facility

If you indicated in line 1k that you are seeking qualifying cogeneration facility status for your facility, then you must respond to the items on pages 11 through 13. Otherwise, skip pages 11 through 13.

General Cogeneration Information	<p>Pursuant to 18 C.F.R. § 292.202(c), a cogeneration facility produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. Pursuant to 18 C.F.R. § 292.202(s), "sequential use" of energy means the following: (1) for a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard contained in 18 C.F.R. § 292.205(a); or (2) for a bottoming-cycle cogeneration facility, the use of at least some reject heat from a thermal application or process for power production.</p>	
	<p>10a What type(s) of cogeneration technology does the facility represent? (check all that apply)</p> <p> <input type="checkbox"/> Topping-cycle cogeneration <input type="checkbox"/> Bottoming-cycle cogeneration </p>	
	<p>10b To help demonstrate the sequential operation of the cogeneration process, and to support compliance with other requirements such as the operating and efficiency standards, include with your filing a mass and heat balance diagram depicting average annual operating conditions. This diagram must include certain items and meet certain requirements, as described below. You must check next to the description of each requirement below to certify that you have complied with these requirements.</p>	
	<p>Check to certify compliance with indicated requirement</p>	<p>Requirement</p>
	<input type="checkbox"/>	Diagram must show orientation within system piping and/or ducts of all prime movers, heat recovery steam generators, boilers, electric generators, and condensers (as applicable), as well as any other primary equipment relevant to the cogeneration process.
	<input type="checkbox"/>	Any average annual values required to be reported in lines 10b, 12a, 13a, 13b, 13d, 13f, 14a, 15b, 15d and/or 15f must be computed over the anticipated hours of operation.
	<input type="checkbox"/>	Diagram must specify all fuel inputs by fuel type and average annual rate in Btu/h. Fuel for supplementary firing should be specified separately and clearly labeled. All specifications of fuel inputs should use lower heating values.
	<input type="checkbox"/>	Diagram must specify average gross electric output in kW or MW for each generator.
	<input type="checkbox"/>	Diagram must specify average mechanical output (that is, any mechanical energy taken off of the shaft of the prime movers for purposes not directly related to electric power generation) in horsepower, if any. Typically, a cogeneration facility has no mechanical output.
	<input type="checkbox"/>	At each point for which working fluid flow conditions are required to be specified (see below), such flow condition data must include mass flow rate (in lb/h or kg/s), temperature (in °F, R, °C or K), absolute pressure (in psia or kPa) and enthalpy (in Btu/lb or kJ/kg). Exception: For systems where the working fluid is <i>liquid only</i> (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid are clearly indicated on the diagram or in the Miscellaneous section starting on page 19, only mass flow rate and temperature (not pressure and enthalpy) need be specified. For reference, specific heat at standard conditions for pure liquid water is approximately 1.002 Btu/(lb*R) or 4.195 kJ/(kg*K).
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at input to and output from each steam turbine or other expansion turbine or back-pressure turbine.	
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at delivery to and return from each thermal application.	
<input type="checkbox"/>	Diagram must specify working fluid flow conditions at make-up water inputs.	

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities

EPAct 2005 cogeneration facilities: The Energy Policy Act of 2005 (EPAct 2005) established a new section 210(n) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 824a-3(n), with additional requirements for any qualifying cogeneration facility that (1) is seeking to sell electric energy pursuant to section 210 of PURPA and (2) was either not a cogeneration facility on August 8, 2005, or had not filed a self-certification or application for Commission certification of QF status on or before February 1, 2006. These requirements were implemented by the Commission in 18 C.F.R. § 292.205(d). Complete the lines below, carefully following the instructions, to demonstrate whether these additional requirements apply to your cogeneration facility and, if so, whether your facility complies with such requirements.

11a Was your facility operating as a qualifying cogeneration facility on or before August 8, 2005? Yes No

11b Was the initial filing seeking certification of your facility (whether a notice of self-certification or an application for Commission certification) filed on or before February 1, 2006? Yes No

If the answer to either line 11a or 11b is Yes, then continue at line 11c below. Otherwise, if the answers to both lines 11a and 11b are No, skip to line 11e below.

11c With respect to the design and operation of the facility, have any changes been implemented on or after February 2, 2006 that affect general plant operation, affect use of thermal output, and/or increase net power production capacity from the plant's capacity on February 1, 2006?

Yes (continue at line 11d below)

No. Your facility is not subject to the requirements of 18 C.F.R. § 292.205(d) at this time. However, it may be subject to these requirements in the future if changes are made to the facility. At such time, the applicant would need to recertify the facility to determine eligibility. Skip lines 11d through 11j.

11d Does the applicant contend that the changes identified in line 11c are not so significant as to make the facility a "new" cogeneration facility that would be subject to the 18 C.F.R. § 292.205(d) cogeneration requirements?

Yes. Provide in the Miscellaneous section starting on page 19 a description of any relevant changes made to the facility (including the purpose of the changes) and a discussion of why the facility should not be considered a "new" cogeneration facility in light of these changes. Skip lines 11e through 11j.

No. Applicant stipulates to the fact that it is a "new" cogeneration facility (for purposes of determining the applicability of the requirements of 18 C.F.R. § 292.205(d)) by virtue of modifications to the facility that were initiated on or after February 2, 2006. Continue below at line 11e.

11e Will electric energy from the facility be sold pursuant to section 210 of PURPA?

Yes. The facility is an EPAct 2005 cogeneration facility. You must demonstrate compliance with 18 C.F.R. § 292.205(d)(2) by continuing at line 11f below.

No. Applicant certifies that energy will *not* be sold pursuant to section 210 of PURPA. Applicant also certifies its understanding that it must recertify its facility in order to determine compliance with the requirements of 18 C.F.R. § 292.205(d) *before* selling energy pursuant to section 210 of PURPA in the future. Skip lines 11f through 11j.

11f Is the net power production capacity of your cogeneration facility, as indicated in line 7g above, less than or equal to 5,000 kW?

Yes, the net power production capacity is less than or equal to 5,000 kW. 18 C.F.R. § 292.205(d)(4) provides a rebuttable presumption that cogeneration facilities of 5,000 kW and smaller capacity comply with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2). Applicant certifies its understanding that, should the power production capacity of the facility increase above 5,000 kW, then the facility must be recertified to (among other things) demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Skip lines 11g through 11j.

No, the net power production capacity is greater than 5,000 kW. Demonstrate compliance with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2) by continuing on the next page at line 11g.



EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities (continued)

Lines 11g through 11k below guide the applicant through the process of demonstrating compliance with the requirements for "fundamental use" of the facility's energy output. 18 C.F.R. § 292.205(d)(2). Only respond to the lines on this page if the instructions on the previous page direct you to do so. Otherwise, skip this page.

18 C.F.R. § 292.205(d)(2) requires that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. If you were directed on the previous page to respond to the items on this page, then your facility is an EPAct 2005 cogeneration facility that is subject to this "fundamental use" requirement.

The Commission's regulations provide a two-pronged approach to demonstrating compliance with the requirements for fundamental use of the facility's energy output. First, the Commission has established in 18 C.F.R. § 292.205(d)(3) a "fundamental use test" that can be used to demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Under the fundamental use test, a facility is considered to comply with 18 C.F.R. § 292.205(d)(2) if at least 50 percent of the facility's total annual energy output (including electrical, thermal, chemical and mechanical energy output) is used for industrial, commercial, residential or institutional purposes.

Second, an applicant for a facility that does not pass the fundamental use test may provide a narrative explanation of and support for its contention that the facility nonetheless meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

Complete lines 11g through 11j below to determine compliance with the fundamental use test in 18 C.F.R. § 292.205(d)(3). Complete lines 11g through 11j *even if you do not intend to rely upon the fundamental use test to demonstrate compliance with 18 C.F.R. § 292.205(d)(2)*.

11g Amount of electrical, thermal, chemical and mechanical energy output (net of internal generation plant losses and parasitic loads) expected to be used annually for industrial, commercial, residential or institutional purposes and not sold to an electric utility	MWh
11h Total amount of electrical, thermal, chemical and mechanical energy expected to be sold to an electric utility	MWh
11i Percentage of total annual energy output expected to be used for industrial, commercial, residential or institutional purposes and not sold to a utility = 100 * 11g / (11g + 11h)	0 %

11j Is the response in line 11i greater than or equal to 50 percent?

Yes. Your facility complies with 18 C.F.R. § 292.205(d)(2) by virtue of passing the fundamental use test provided in 18 C.F.R. § 292.205(d)(3). Applicant certifies its understanding that, if it is to rely upon passing the fundamental use test as a basis for complying with 18 C.F.R. § 292.205(d)(2), then the facility must comply with the fundamental use test both in the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years.

No. Your facility does not pass the fundamental use test. Instead, you must provide in the Miscellaneous section starting on page 19 a narrative explanation of and support for why your facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility. Applicants providing a narrative explanation of why their facility should be found to comply with 18 C.F.R. § 292.205(d)(2) in spite of non-compliance with the fundamental use test may want to review paragraphs 47 through 61 of Order No. 671 (accessible from the Commission's QF website at www.ferc.gov/QF), which provide discussion of the facts and circumstances that may support their explanation. Applicant should also note that the percentage reported above will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years. See Order No. 671 at paragraph 51. As such, the applicant should make sure that it reports appropriate values on lines 11g and 11h above to serve as the relevant annual standard, taking into account expected variations in production conditions.

Information Required for Topping-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents topping-cycle cogeneration technology, then you must respond to the items on pages 14 and 15. Otherwise, skip pages 14 and 15.

Usefulness of Topping-Cycle Thermal Output	<p>The thermal energy output of a topping-cycle cogeneration facility is the net energy made available to an industrial or commercial process or used in a heating or cooling application. Pursuant to sections 292.202(c), (d) and (h) of the Commission's regulations (18 C.F.R. §§ 292.202(c), (d) and (h)), the thermal energy output of a qualifying topping-cycle cogeneration facility must be useful. In connection with this requirement, describe the thermal output of the topping-cycle cogeneration facility by responding to lines 12a and 12b below.</p>		
	<p>12a Identify and describe each thermal host, and specify the annual average rate of thermal output made available to each host for each use. For hosts with multiple uses of thermal output, provide the data for each use <i>in separate rows</i>.</p>		
			Average annual rate of thermal output attributable to use (net of heat contained in process return or make-up water)
	Name of entity (thermal host) taking thermal output	Thermal host's relationship to facility; Thermal host's use of thermal output	
	1)	Select thermal host's relationship to facility	
		Select thermal host's use of thermal output	Btu/h
	2)	Select thermal host's relationship to facility	
		Select thermal host's use of thermal output	Btu/h
	3)	Select thermal host's relationship to facility	
		Select thermal host's use of thermal output	Btu/h
4)	Select thermal host's relationship to facility		
	Select thermal host's use of thermal output	Btu/h	
5)	Select thermal host's relationship to facility		
	Select thermal host's use of thermal output	Btu/h	
6)	Select thermal host's relationship to facility		
	Select thermal host's use of thermal output	Btu/h	
<input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed			
<p>12b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each use of the thermal output identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's use of thermal output is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific use of thermal output related to the instant facility, then you need only provide a brief description of that use and a reference by date and docket number to the order certifying your facility with the indicated use. Such exemption may not be used if any change creates a material deviation from the previously authorized use.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			



Topping-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing topping-cycle technology must demonstrate compliance with the topping-cycle operating standard and, if applicable, efficiency standard. Section 292.205(a)(1) of the Commission's regulations (18 C.F.R. § 292.205(a)(1)) establishes the operating standard for topping-cycle cogeneration facilities: the useful thermal energy output must be no less than 5 percent of the total energy output. Section 292.205(a)(2) (18 C.F.R. § 292.205(a)(2)) establishes the efficiency standard for topping-cycle cogeneration facilities for which installation commenced on or after March 13, 1980: the useful power output of the facility plus one-half the useful thermal energy output must (A) be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; and (B) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility. To demonstrate compliance with the topping-cycle operating and/or efficiency standards, or to demonstrate that your facility is exempt from the efficiency standard based on the date that installation commenced, respond to lines 13a through 13l below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 13a through 13l below considering only the energy inputs and outputs attributable to the topping-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion (topping or bottoming) of the cogeneration system.

13a Indicate the annual average rate of useful thermal energy output made available to the host(s), net of any heat contained in condensate return or make-up water	Btu/h
13b Indicate the annual average rate of net electrical energy output	kW
13c Multiply line 13b by 3,412 to convert from kW to Btu/h	0 Btu/h
13d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
13e Multiply line 13d by 2,544 to convert from hp to Btu/h	0 Btu/h
13f Indicate the annual average rate of energy input from natural gas and oil	Btu/h
13g Topping-cycle operating value = $100 * 13a / (13a + 13c + 13e)$	0 %
13h Topping-cycle efficiency value = $100 * (0.5 * 13a + 13c + 13e) / 13f$	0 %
13i Compliance with operating standard: Is the operating value shown in line 13g greater than or equal to 5%? <input type="checkbox"/> Yes (complies with operating standard) <input type="checkbox"/> No (does not comply with operating standard)	
13j Did installation of the facility in its current form commence on or after March 13, 1980? <input type="checkbox"/> Yes. Your facility is subject to the efficiency requirements of 18 C.F.R. § 292.205(a)(2). Demonstrate compliance with the efficiency requirement by responding to line 13k or 13l, as applicable, below. <input type="checkbox"/> No. Your facility is exempt from the efficiency standard. Skip lines 13k and 13l.	
13k Compliance with efficiency standard (for low operating value): If the operating value shown in line 13g is less than 15%, then indicate below whether the efficiency value shown in line 13h greater than or equal to 45%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	
13l Compliance with efficiency standard (for high operating value): If the operating value shown in line 13g is greater than or equal to 15%, then indicate below whether the efficiency value shown in line 13h is greater than or equal to 42.5%: <input type="checkbox"/> Yes (complies with efficiency standard) <input type="checkbox"/> No (does not comply with efficiency standard)	



Information Required for Bottoming-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents bottoming-cycle cogeneration technology, then you must respond to the items on pages 16 and 17. Otherwise, skip pages 16 and 17.



Usefulness of Bottoming-Cycle Thermal Output	<p>The thermal energy output of a bottoming-cycle cogeneration facility is the energy related to the process(es) from which at least some of the reject heat is then used for power production. Pursuant to sections 292.202(c) and (e) of the Commission's regulations (18 C.F.R. § 292.202(c) and (e)), the thermal energy output of a qualifying bottoming-cycle cogeneration facility must be useful. In connection with this requirement, describe the process(es) from which at least some of the reject heat is used for power production by responding to lines 14a and 14b below.</p>		
	<p>14a Identify and describe each thermal host and each bottoming-cycle cogeneration process engaged in by each host. For hosts with multiple bottoming-cycle cogeneration processes, provide the data for each process <i>in separate rows</i>.</p>		
	Name of entity (thermal host) performing the process from which at least some of the reject heat is used for power production	Thermal host's relationship to facility; Thermal host's process type	Has the energy input to the thermal host been augmented for purposes of increasing power production capacity? (if Yes, describe on p. 19)
	1)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	2)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
	3)	Select thermal host's relationship to facility	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Select thermal host's process type	
<p><input type="checkbox"/> Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed</p>			
<p>14b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each process identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's process is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific bottoming-cycle process related to the instant facility, then you need only provide a brief description of that process and a reference by date and docket number to the order certifying your facility with the indicated process. Such exemption may not be used if any material changes to the process have been made.) If additional space is needed, continue in the Miscellaneous section starting on page 19.</p>			

Bottoming-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing bottoming-cycle technology and for which installation commenced on or after March 13, 1990 must demonstrate compliance with the bottoming-cycle efficiency standards. Section 292.205(b) of the Commission's regulations (18 C.F.R. § 292.205(b)) establishes the efficiency standard for bottoming-cycle cogeneration facilities: the useful power output of the facility must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing. To demonstrate compliance with the bottoming-cycle efficiency standard (if applicable), or to demonstrate that your facility is exempt from this standard based on the date that installation of the facility began, respond to lines 15a through 15h below.

If you indicated in line 10a that your facility represents *both* topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 15a through 15h below considering only the energy inputs and outputs attributable to the bottoming-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion of the cogeneration system (topping or bottoming).

15a Did installation of the facility in its current form commence on or after March 13, 1980?

Yes. Your facility is subject to the efficiency requirement of 18 C.F.R. § 292.205(b). Demonstrate compliance with the efficiency requirement by responding to lines 15b through 15h below.

No. Your facility is exempt from the efficiency standard. Skip the rest of page 17.

15b Indicate the annual average rate of net electrical energy output	kW
---	----

15c Multiply line 15b by 3,412 to convert from kW to Btu/h	0 Btu/h
---	---------

15d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
---	----

15e Multiply line 15d by 2,544 to convert from hp to Btu/h	0 Btu/h
---	---------

15f Indicate the annual average rate of supplementary energy input from natural gas or oil	Btu/h
---	-------

15g Bottoming-cycle efficiency value = $100 * (15c + 15e) / 15f$	0 %
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15h Compliance with efficiency standard: Indicate below whether the efficiency value shown in line 15g is greater than or equal to 45%:

Yes (complies with efficiency standard) No (does not comply with efficiency standard)



Miscellaneous

Use this space to provide any information for which there was not sufficient space in the previous sections of the form to provide. For each such item of information *clearly identify the line number that the information belongs to*. You may also use this space to provide any additional information you believe is relevant to the certification of your facility.

Your response below is not limited to one page. Additional page(s) will automatically be inserted into this form if the length of your response exceeds the space on this page. Use as many pages as you require.

* Item 5a and 5b. Following an internal restructuring and indirect upstream tax equity investment, DG Whitefield, LLC's ("Whitefield") ownership has changed. EWPRC Biomass Holdings, LLC ("EWPRC Biomass Holdings") holds 100% of the membership interests in Whitefield. EWP Renewable Corporation ("EWPRC") holds 100% of the Class A membership interests in EWPRC Biomass Holdings. EWPRC, in turn, is a wholly-owned subsidiary of EWP America, Inc. ("EWP America"). EWP America is a wholly-owned subsidiary of Korea East-West Power Corp. ("EWP"), which is a wholly owned subsidiary of Korea Electric Power ("KEP"). None of EWPRC Biomass Holdings, EWPRC, EWP America, EWP or KEP is an "electric utility"; these entities are "electric utility holding companies" but solely with regard to electric facilities that are QFs, exempt wholesale generators, or foreign utility companies.

Whitefield notes that Whitehaven Springs Biomass LLC ("Whitehaven") has acquired 100% of the Class B membership interests in EWPRC Biomass Holdings (the "Class B Interests") in a tax equity investment transaction. Pursuant to that transaction, EWPRC continues to manage EWPRC Biomass Holdings and, indirectly, Whitefield, subject to certain approval rights held by Whitehaven. EWPRC continues to manage Whitefield with respect to its day-to-day operations, including its dispatch and power sales. Whitehaven is a wholly-owned subsidiary of State Street Bank and Trust Company ("State Street"). Neither Whitehaven nor State Street is an "electric company." Whitehaven does not own any interests in any other person. State Street owns interests similar to the Class B Interests in certain other entities that own electric faculties that are QFs or that are exempt wholesale generators.

State of New Hampshire

Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that DG WHITEFIELD LLC is a Delaware Limited Liability Company registered to transact business in New Hampshire on March 07, 2007. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: **573436**

Certificate Number: **0004210498**



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 13th day of November A.D. 2018.

A handwritten signature in black ink, appearing to read "Wm Gardner".

William M. Gardner
Secretary of State

ATTACHMENT C

Public Service Co. of New Hampshire, 131 FERC ¶ 61,027 (Apr. 15, 2010)

I. Background

3. On October 20, 2006, the Commission issued Order No. 688,³ revising its regulations governing utilities' obligations to purchase electric energy produced by QFs. Order No. 688 implements PURPA section 210(m),⁴ which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts to purchase electric energy from QFs if the Commission finds that the QFs have nondiscriminatory access to markets. The Commission found in Order No. 688 that the markets administered by ISO-NE were one of the markets that satisfy the criteria of PURPA section 210(m)(1)(A).⁵ Accordingly, section 292.309(e) of the Commission's regulations⁶ established a rebuttable presumption (for ISO-NE and other markets) that provides large QFs (over 20 MW net capacity) interconnected with member electric utilities with nondiscriminatory access to markets described in section 210(m)(1)(A). The Commission also established a second rebuttable presumption contained in section 292.309(d)(1) of the regulations, which provides that a QF with a net capacity at or below 20 MW does *not* have nondiscriminatory access to markets.⁷

II. PSNH's Application

4. PSNH is the State of New Hampshire's largest utility, and is a wholly-owned subsidiary of Northeast Utilities. PSNH states that it meets the requirements for relief under section 292.309(a)(1) of the Commission's regulations,⁸ and that, as a member of ISO-NE, it is relying on the rebuttable presumption contained in section 292.309(e) and should be relieved of the obligation to purchase electric energy from QFs larger than 20 MW net capacity (large QFs). Accordingly, PSNH asks for relief, on a service

³ *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007), *aff'd sub nom. American Forest and Paper Association v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008).

⁴ Section 210(m) was added to PURPA by section 1253 of the Energy Policy Act of 2005. *See* Pub. L. No. 109-58, § 1253, 119 Stat. 594, 967-69 (2005) (EPAAct 2005).

⁵ 16 U.S.C. § 842a-3(m)(1)(A) (2006); *see* 18 C.F.R. § 292.309(a)(1) (2009).

⁶ 18 C.F.R. § 292.309(e) (2009).

⁷ *Id.* § 292.309(d)(1).

⁸ *Id.* § 292.309(a)(1).

territory-wide basis, of the requirement to enter into new power purchase obligations or contracts with QFs over 20 MW net capacity on a service territory-wide basis, i.e., the State of New Hampshire.⁹

5. PSNH further states that it can overcome the rebuttable presumption set forth in section 292.309(d)(1) of the Commission's regulations for those QFs that are 5 MW to 20 MW net capacity (small QFs).

6. PSNH claims that electric utilities may rebut the small QF presumption by demonstrating the opposite of what QFs need to demonstrate to rebut the large QF presumption. PSNH states that it can rebut the presumption of lack of nondiscriminatory access for small QFs by demonstrating: (1) there are not operational characteristics or transmission limitations preventing small QFs from effectively participating in the wholesale energy and capacity markets on the same basis as any other resource; (2) small and intermittent generators have access to a mechanism to schedule transmission service and make sales in advance on a consistent basis; (3) transmission constraints do not prevent small generators from accessing markets; (4) small QFs have nondiscriminatory access to distribution facilities for the purpose of selling power in the wholesale market; (5) small QFs do not have to pay unreasonable interconnection, transmission, or distribution charges to deliver their power to customers, and (6) there are no jurisdictional differences, pancaked delivery rates, or other administrative burdens that prevent small QFs from obtaining access to buyers other than the interconnected utility.

7. PSNH claims that small QFs are eligible to participate in ISO-NE's markets and that there is no size threshold for entry, e.g., ISO-NE allows small intermittent power resources to schedule and sell energy and capacity in advance on a consistent basis, while avoiding penalties for their intermittent output. Moreover, PSNH says that small QFs and other small generators in New Hampshire (or their respective parent companies/affiliates) fully participate in ISO-NE's market, and that there are no meaningful barriers to small QFs participating in the ISO-NE forward capacity market. PSNH alleges that nondiscriminatory interconnection services and nondiscriminatory transmission and distribution services are also available to small QFs.

8. PSNH identifies a number of small QFs that it claims are ISO-NE market participants, some of which have parents/affiliates that are ISO-NE market participants, and some have market-based rate authority. PSNH asserts that Electric Quarterly Report (EQR) data shows that generators less than 20 MW have been parties to power and

⁹ PSNH states that it has five long-term power purchase contracts with QFs outside of its service territory.

energy transactions in ISO-NE's market and have successfully bid into the ISO-NE forward capacity market.

III. Notice and Responsive Pleadings

9. Notices of PSNH's application and amended applications were mailed by the Commission on January 21, 2010 and January 27, 2010 to each of the potentially-affected QFs identified in PSNH's application. Notices of the application and amended applications were published in the *Federal Register*, 75 Fed. Reg. 3458 (2010), 75 Fed. Reg. 4369 (2010), and 75 Fed. Reg. 6197 (2010), with interventions and protests due on or before February 12, 2010.

10. Timely motions to intervene were filed by Sweetwater Hydroelectric, Inc.; Mascoma Hydro Corporation; Consolidated Hydro New Hampshire, Inc.; Somersworth Hydro Co., Inc.; Brookfield Energy Marketing Inc.; and WM Renewable Energy, L.L.C. A motion to intervene out-of-time was filed by Gestamp Biotermica, Inc. (Gestamp). Timely motions to intervene and comments and/or protests were filed by Clean Power Development, LLC (Clean Power); Indeck Energy-Alexandria, LLC (Indeck); and Granite State Hydropower Association, LLC (Granite State). PSNH filed an answer to the protests on February 18, 2010.

11. Clean Power argues that PSNH's request should be denied with respect to Clean Power because, on April 7, 2009, Clean Power initiated the process with the New Hampshire Public Utilities Commission (New Hampshire Commission) to establish a legally enforceable obligation. Clean Power argues that any obligation established should be grandfathered.

12. Indeck argues that there are significant costs associated with participating in day-ahead energy markets for small QFs. Indeck states that these administrative costs are associated with the trading and settlement of energy and capacity in the relevant market as well as the further integration with ISO-NE. Indeck argues that this represents a significant encumbrance on small QFs, and is even more significant for stand-alone QFs, such as Indeck. For these reasons, Indeck protests PSNH's request to terminate the mandatory purchase obligation with respect to QFs 5 MW through 20 MW.

13. Granite State comments that it takes no position on whether the application should be approved or denied, but does argue that, if it is approved, the "cut off" should be over 5 MW, and not 5 MW and over, as proposed by PSNH, to maintain consistency with 18 C.F.R. § 4.60, which defines a project of 5 MW or less as a minor license project, and makes these projects eligible for exemption from licensing requirements under 18 C.F.R. § 4.101.

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.214 (2009), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), we will grant Gestamp's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest or an answer to an answer unless otherwise order by the decisional authority. We are not persuaded to accept PSNH's answer to the protests.

B. Determination

16. PSNH, as a member of ISO-NE, relies upon the rebuttable presumption set forth in section 292.309(e) of the Commission's regulations, i.e., that ISO-NE provides QFs larger than 20 MW net capacity nondiscriminatory access to independently administered, auction-based day-ahead and real-time wholesale markets for the sale of electric energy and to wholesale markets for long-term sales of capacity and electric energy.¹⁰ The potentially-affected QFs identified by PSNH were provided notice of PSNH's application. Clean Power, Indeck, and Granite State protested. As explained below, we grant the request to terminate the mandatory purchase obligation pursuant to section 210(m) of PURPA with respect to all QFs larger than 20 MW. However, as discussed below, we will deny the request to terminate the mandatory purchase obligation with respect to all QFs with a net capacity at or below 20 MW, and, more specifically, from 5 MW through 20 MW as proposed by PSNH.

17. In Order No. 688,¹¹ the Commission implemented section 210(m) of PURPA, which provides for the termination of the requirement to enter into a new obligation or contract to purchase from a QF if the QF has nondiscriminatory access to certain types of markets specified in section 210(m). In Order No. 688, the Commission found that the markets run by ISO-NE, as well as PJM Interconnection, LLC, Midwest Independent Transmission System Operator, Inc. and New York Independent System Operator, Inc.,

¹⁰ 18 C.F.R. §§ 292.309(a)(1), 292.309(e) (2009).

¹¹ *See supra* note 3.

qualify as markets that justify relief from the mandatory purchase obligation provided that QFs, in fact, have nondiscriminatory access to such markets.¹² Because section 210(m) of PURPA requires the Commission to make a final determination on applications to terminate the requirement to enter into new obligations or contracts to purchase from QFs within 90 days of the application, the Commission established certain rebuttable presumptions to make the processing of the applications possible given the 90-day clock.

18. The Commission established two rebuttable presumptions that are relevant here. The first rebuttable presumption, contained in section 292.309(e) of the Commission's regulations,¹³ is that for ISO-NE (and the other so-called Day 2 RTOs named in the regulation), i.e., the markets described in 292.309(a)(1)(i) as a category of markets that warrant relief from the mandatory purchase obligation, QFs with a net capacity greater than 20 MW have nondiscriminatory access to those markets. Thus, the electric utilities that are members of ISO-NE (and the other so-called Day 2 RTOs) may be relieved of the requirement to enter into new contracts of obligations to purchase from those QFs with over 20 MW net capacity. PSNH, in its application, relies on the rebuttable presumption contained in section 292.309(e) of the regulations that it provides large QFs nondiscriminatory access to ISO-NE's markets, and thus we grant its application with respect to QFs with a net capacity greater than 20 MW (with one possible exception described below).

19. The second rebuttable presumption, contained in section 292.309(d)(1) of the regulations,¹⁴ is that a QF with a capacity at or below 20 MW does *not* have nondiscriminatory access to markets. PSNH attempts to rebut the presumption, contained in section 292.309(d)(1), that it does not provide nondiscriminatory access to markets to QFs 5 MW to 20 MW.

20. PSNH attempts to rebut the presumption that the small QFs do not have nondiscriminatory access to markets in three ways. First, PSNH states that the Commission has listed factors that a large QF can use to rebut the presumption of access to markets, and states that "presumably, electric utilities can rebut the small QF presumption by demonstrating the opposite of what QFs need to demonstrate to rebut the large QF presumption."¹⁵ PSNH then lists those factors in the opposite and states that

¹²Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 117.

¹³ 18 C.F.R. § 292.309(e) (2009).

¹⁴ *Id.* § 292.309(d)(1).

¹⁵ PSNH application at 12.

those factors indicate that small QFs have access to the ISO-NE's markets. Second, PSNH attempts to show that small QFs are eligible to participate in ISO-NE's markets and that there is no size threshold for entry. Finally, PSNH identifies a number of small QFs that it claims are ISO-NE market participants, some of which have parents/affiliates that are ISO-NE market participants, and some of which have market-based rate authority. PSNH asserts that EQR data and data from other sources show that generators smaller than 20 MW net capacity have been parties to power and energy transactions in the ISO-NE market and have successfully bid into ISO-NE's forward capacity market.

21. We find that PSNH's attempt to rebut the presumption that QFs with a net capacity of 5 MW through 20 MW do not have nondiscriminatory access to markets does not meet the standards outlined in Order No. 688. To rebut the small QF presumption and be relieved of the requirement to enter into a new contract or obligation to purchase electric energy from QFs at or below 20 MW, an electric utility must "demonstrate, *with regard to each small QF* that it, in fact, has nondiscriminatory access to the market."¹⁶ The Commission further noted that this procedural process contemplated a "facility-specific determination" by the Commission that a particular QF has nondiscriminatory access to the markets covered by sections 210(m)(1)(A), (B), or (C).¹⁷ Rather than make a facility-specific showing as to individual QFs, PSNH has attempted to show generally that all QFs 5 MW and larger have access to ISO-NE's markets.¹⁸ The Commission expressly declined to make such a generic finding in Order No. 688.¹⁹

22. Under the standards the Commission outlined in Order No. 688, the burden in this proceeding to rebut the presumption, on a QF-by-QF basis, that QFs with a net capacity

¹⁶ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 72 (emphasis added), P 78 ("...relevant evidence may include the extent to which the QF has been participating in the market or is owned by, or is an affiliate of, an entity that has been participating in the relevant market").

¹⁷ *Id.* P 104; *accord supra* note 16. Order No. 688-A is to a like effect. Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 94, 103.

¹⁸ While Order No. 688 draws a line at 20 MW, *see* 18 C.F.R. §§ 292.309(d)(1), (e) (2009), it does not draw any line at 5 MW; the 5 MW line that PSNH proposes to draw is one of PSNH's own making.

¹⁹ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 66, 72 (parties argued that NYISO and ISO-NE provide nondiscriminatory access to smaller QFs, but the Commission opted to draw the line between larger and smaller QFs at 20 MW).

of 20 MW and smaller do not have nondiscriminatory access, is PSNH's burden.²⁰ PSNH did not, however, seek to show that particular individual QFs have access to ISO-NE's markets such that it should be relieved of the requirement to enter into new contracts or obligation to purchase electric energy from those particular individual QFs. Rather, PSNH submitted data with regard to certain existing QFs in an effort to show that *all* small QFs have that access; PSNH was not, however, attempting to rebut on a QF-by-QF basis the presumption that those small QFs lack access to ISO-NE's markets, as Order No. 688 requires. Given the 90-day period within which the Commission must act, when a utility seeks to rebut the presumption that small QFs do not have access to markets, the utility must explain clearly how the evidence presented demonstrates that an individual small QF has nondiscriminatory access to markets that justify relief from the mandatory purchase obligation as to that QF. PSNH did not do so here and, accordingly, we deny without prejudice PSNH's application for relief from the mandatory purchase obligation with respect to QFs 5 MW through 20 MW.

23. Finally, Clean Power asserts that it has the right to a legally enforceable obligation for the sale of energy and capacity at rates determined at the time the obligation is incurred, pursuant to section 292.304(d) of the Commission's regulations,²¹ and that it has filed a complaint with the New Hampshire Commission seeking a legally enforceable obligation. Clean Power asserts that any legally enforceable obligation that results from the complaint should not be subject to termination in this proceeding.

24. The Commission's regulations provide, in certain circumstances, for the grandfathering of rights.²² The Commission has determined that a QF that has initiated a state PURPA proceeding that may result in a legally enforceable contract or obligation

²⁰ "In order to rebut the 20 MW presumption, an electric utility will have the full burden to show that small QFs have nondiscriminatory access to the market of which the electric utility is a member." Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 78.

²¹ 18 C.F.R. § 292.304(d) (2009). Each QF has the option to sell either pursuant to a legally enforceable obligation, or to sell "as available" energy. If the QF chooses to sell pursuant to a legally enforceable obligation, it may choose to have its rates based on either the utility's avoided costs calculated at the time of delivery, or the utility's avoided costs calculated at the time the obligation is incurred. *See JD Wind 1, LLC*, 129 FERC ¶ 61,148, at P 25-29 (2009), *order denying requests for rehearing, reconsideration or clarification*, 130 FERC ¶ 61,127, at P 16 (2010).

²² 18 C.F.R. § 292.314 (2009). *See Alliant Energy Corporate Services, Inc.*, 123 FERC ¶ 61,155, at P 11 (2008); *Midwest Renewable Energy Projects, LLC*, 116 FERC ¶ 61,017, at P 17 (2006).

prior to the applicable electric utility filing its petition for relief pursuant to section 292.310 of the Commission's regulations will be entitled to have any contract or obligation that may be established by state law grandfathered.²³ Clean Power initiated its proceeding with the New Hampshire Commission before PSNH filed its petition to terminate its purchase obligation. Thus, any contract or legally enforceable obligation that results from the New Hampshire Commission's action on Clean Power's petition will be grandfathered and not subject to this termination order.

The Commission orders:

(A) PSNH's application is granted in part, and PSNH is relieved on a service territory-wide basis of the requirement to enter into new power purchase obligations or contracts with QFs that have a net capacity in excess of 20 MW effective January 7, 2010 (with the exception of any contract or legally enforceable obligation that results from the New Hampshire Commission's action on Clean Power's petition).

(B) PSNH's application to be relieved of the obligation to enter into new power purchase obligations or contracts with QFs that have a net capacity from 5 MW through 20 MW is hereby denied without prejudice.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²³ Order No. 688, FERC Stats. & Regs. ¶ 31,233 at P 213; Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 at P 137-40.

Document Content(s)

QM10-4-000.DOC.....1-9

ATTACHMENT D

NERA Petition, FERC Docket EL 19-10

David B. Raskin
202 429 6254
draskin@steptoe.com



1330 Connecticut Avenue, NW
Washington, DC 20036-1795
202 429 3000 main
www.steptoe.com

November 2, 2018

Via eFiling

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: New England Ratepayers Association, Docket No. EL19-___-000
Petition for Declaratory Order and Request for Expedited Action**

Dear Ms. Bose:

Attached for filing, please find the Petition for Declaratory Order and Request for Expedited Action of the New England Ratepayers Association.

Pursuant to Sections 385.207(c) and 381.302(a) of the Federal Energy Regulatory Commission's (FERC) regulations, the filing fee for this petition for declaratory order, in the form of a check payable to the Treasurer of the United States, in the amount of \$27,130, will be delivered via courier today to the FERC Filing Desk, along with a copy of the receipt of this eFiling for identification.

Thank you for your assistance.

Sincerely,

/s/ David B. Raskin

David B. Raskin
On behalf of the New England Ratepayers Association

Attachment

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New England Ratepayers Association) Docket No. EL19-____-000

**PETITION FOR DECLARATORY ORDER AND REQUEST FOR EXPEDITED
ACTION OF THE NEW ENGLAND RATEPAYERS ASSOCIATION**

The New England Ratepayers Association (“NERA”) brings this Petition pursuant to Rule 207¹ of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure, requesting that the Commission issue a declaratory order finding that Senate Bill 365 (“SB 365”),² a recently-enacted New Hampshire statute that mandates a purchase price for wholesale sales by seven generators operating in the state, is preempted by the Federal Power Act. NERA further requests a declaration that the same law violates Section 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”),³ because the legislature ignored the requirement under PURPA and this Commission’s implementing regulations⁴ that any rates set by the states for wholesale sales by QFs may not exceed the purchasing utilities’ avoided costs. In addition, NERA requests that, pursuant to an Order issued by the Commission under section 210(m) of PURPA terminating PSNH’s mandatory purchase obligation on a

¹ 18 C.F.R. § 385.207 (2018).

² SB 365, 2018 N.H. Laws Ch. 379, An Act relative to the use of renewable generation to provide fuel diversity, *codified at* N.H. Rev. Stat. Chapter 362-H.

³ 16 U.S.C. §824a-3 (2012).

⁴ 18 C.F.R. §§ 292.304(a); 292.101(b)(6) (2018).

service territory-wide basis for QFs with a net capacity in excess of 20 MW, the Commission find that the state is pre-empted from ordering purchases that are contrary to that Order. Finally, NERA requests that the Commission rule on this Petition by February 1, 2019 (the date customers may first bear the costs of SB 365).

NERA is a non-profit organization incorporated in the Commonwealth of Massachusetts, and was established to advocate for ratepayers located throughout every state in New England. It is dedicated to promoting reductions in rates for utility services for New England ratepayers, and focuses on a range of regulated services, including energy, water, and telecommunications.

SB 365 requires “Electric Distribution Companies” (“EDCs”) to enter into contracts with certain eligible independently-owned biomass and municipal-waste-powered generators (hereinafter “eligible facilities”), all of which are “qualifying facilities” under PURPA, for the facilities’ entire net energy output. But the statute goes further, and impermissibly sets an arbitrary price for these wholesale sales equal to 80% of the full requirements *retail* rate for default service, termed the “Adjusted Energy Rate.” In so doing, the law intrudes on this Commission’s exclusive jurisdiction to set rates for wholesale sales of electricity.⁵ Precedent from the Supreme Court and this Commission make clear that whatever the states may do to encourage the use of renewable or fuel-diverse generation, they may not advance those objectives by setting the price for wholesale sales of electricity. *Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1297-99 (2016) (“States may not seek to achieve ends, however legitimate,

⁵ 16 U.S.C. §§ 824(b), 824d(a) (2012).

through regulatory means that intrude on FERC’s authority over interstate wholesale rates”).⁶

The New Hampshire legislature did not invoke PURPA as a basis for the State to set rates under SB 365. But regardless, PURPA cannot save the statute from preemption, because the legislature made no attempt to set the rate for these wholesale energy sales according to the EDCs’ avoided cost, and SB 365 does not authorize the New Hampshire Public Utilities Commission (“NHPUC”) to do so. Notably, the NHPUC has already determined that the EDCs’ avoided cost for energy is equal to the ISO New England Inc. (“ISO-NE”) real time price (as adjusted for line losses, wheeling costs, and administrative costs incurred by the utility for the transaction).⁷ SB 365 not only ignores PURPA’s avoided cost requirement and the NHPUC’s implementation thereof, but acknowledges that the legislatively-prescribed rate for these sales *will exceed* the ISO-NE price. The statute recoups the excessive charges paid to eligible facilities by requiring retail customers to bear the cost of these excess payments to generators by imposing a non-bypassable charge for the difference between the “Adjusted Energy Rate” and the ISO-NE market-clearing price. By setting rates above avoided cost, SB 365 violates the fundamental requirement of PURPA that retail customers must remain indifferent to the

⁶ *Accord S. Cal. Edison Co.*, 70 FERC ¶ 61,215 at 61,676 (1995) (suggesting that states may “require a utility . . . to purchase power from the supplier of a particular type of resource,” but – unless the seller is a QF and the rate set equal to the purchasing utility’s avoided cost – the “rates for wholesale sales would be regulated by this Commission”), *order on reconsideration*, 71 FERC ¶ 61,269 (1995); *see also Conn. Light & Power Co.*, 71 FERC ¶ 61,035 at 61,153 (1995) (order denying reconsideration) (“[S]tates have no authority outside of PURPA to set QF rates at wholesale.”); *Midwest Power Sys., Inc.*, 78 FERC ¶ 61,067 at 61,247-48 (1997).

⁷ *Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order No. 25,920, 2016 WL 3613349, at *51 (N.H.P.U.C. July 1, 2016).

EDCs' procuring power from eligible facilities. *See Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 858 (9th Cir. 1994).⁸

Recently, the Commission and the courts have been presented with cases that raise difficult jurisdictional questions – cases in which the precise line between FERC and state authority must be discerned with respect to new products or novel circumstances. This case is not one of those cases. The jurisdictional issue raised in this Petition is straightforward, and the Commission has decided it previously on several occasions. The State of New Hampshire is simply attempting to set the rate for a physical sale of power at wholesale, a matter that is at the heart of the Commission's Federal Power Act jurisdiction. The State does not attempt to justify its action by reference to its limited rate setting authority under PURPA and the rate it established bears no relationship to the buyers' avoided cost. Accordingly, NERA respectfully requests that the Commission issue a declaration that: (1) SB 365 is preempted under the Federal Power Act because it impermissibly sets rates for wholesale sales of energy; (2) SB 365 is additionally preempted because it violates this Commission's regulations and sets a rate for sales in excess of avoided cost, in violation of PURPA; and (3) as to PSNH, any mandate requiring purchases from QFs with a net generation in excess of 20 MW is pre-empted by Order of this Commission under section 210(m) of PURPA.

⁸ *See also* 18 C.F.R. § 292.304(a)(2) (“Nothing in this subpart requires any electric utility to pay more than the avoided costs for purchases.”).

I. COMMUNICATIONS

The names, titles and mailing addresses of the persons who should be served with communications regarding this filing are as follows:

Marc Brown, President
New England Ratepayers Association
PO Box 542
Concord, NH 03302
(603) 369-4301
marc@neratepayers.org

David B. Raskin
Richard L. Roberts
Nathaniel Brower
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000
draskin@steptoe.com
rroberts@steptoe.com
nbrower@steptoe.com

II. New Hampshire's Enactment of SB 365

On September 13, 2018, the New Hampshire General Court (New Hampshire's bicameral legislative body) enacted SB 365, over the Governor's veto. The statute's legislative findings reflect a determination that "continued operation of the state's 6 independent biomass-fired electric generating plants and the state's single renewable waste-to-generating plant are at-risk due to energy pricing volatility." The seven "eligible facilities" defined by SB 365⁹ are as follows:

1. **Springfield Power, LLC**
Springfield, NH
17.7 MW (biomass)¹⁰
2. **DG Whitefield, LLC**
Whitefield, NH
17.7 MW (biomass)¹¹

⁹ N.H. Rev. Stat. § 362-H:1(V).

¹⁰ Springfield Power, LLC filed a Form No. 556 Self-Recertification for QF Status in Dkt. No. QF84-423-006 on April 12, 2012.

3. **Indeck Energy-Alexandria L.L.C.**
Alexandria, NH
15.2 MW (biomass)¹²
4. **Bridgewater Power Company, L.P.**
Bridgewater, NH
16 MW (biomass)¹³
5. **Pinetree Power - Tamworth LLC**
Tamworth, NH
21.5 MW (biomass)¹⁴
6. **Pinetree Power, Inc.**
Bethlehem, NH
15.9 MW (biomass)¹⁵
7. **Wheelabrator Concord Company, L.P.**
Penacook, NH
13 MW (waste-to-energy)¹⁶

The six biomass plants all burn wood and are located within the service territory of Public Service Co. of New Hampshire (d/b/a Eversource Energy, hereinafter referred to alternatively as “PSNH” or “Eversource”).¹⁷ The Wheelabrator waste-to-energy plant is located in the service territory of Unitil Corporation (“Unitil”).

¹¹ DG Whitefield, LLC filed a Form No. 556 in Dkt. No. QF84-444-007 on April 12, 2012.

¹² Indeck Energy-Alexandria, L.L.C. filed a Form No. 556 in Dkt. No. QF86-377-003 on September 9, 2011.

¹³ Bridgewater Power Co., L.P. filed a Form No. 556 in Dkt. No. QF86-53-004 on March 20, 2015.

¹⁴ Notice of Self-Recertification of Qualifying Facility Status of Pinetree Power - Tamworth, Inc. to Reflect Change of Ownership, Dkt. No. QF86-511-005 (Dec. 15, 2008).

¹⁵ Notice of Self-Recertification of Qualifying Facility Status of Pinetree Power, Inc. to Reflect Change of Ownership, Dkt. No. QF85-270-005 (Dec. 15, 2008).

¹⁶ Wheelabrator Concord Co., L.P. filed a Form No. 556 in Dkt. No. QF86-176-001 on March 19, 2015.

¹⁷ It should be noted that there are two additional independently-owned biomass-fueled generators located in New Hampshire, both within PSNH’s retail service territory – the 75 MW

SB 365 mandates that each EDC required to procure default service, which includes both PSNH and Unitil, “shall offer to purchase the net energy output of any eligible facility located in its service territory.”¹⁸ These EDCs are required to solicit proposals from the eligible facilities as part of their solicitations of power supply needed to provide default service.¹⁹ But proposals from eligible facilities for SB 365 contracts are *not* to be competitively bid. On the contrary, SB 365 mandates that EDCs must accept offers for sales of energy by eligible facilities at a pre-determined price²⁰ termed the “Adjusted Energy Rate.” This mandated rate is equal to 80% of the *retail* rate for default service, minus an adjustment for the cost of compliance with the state’s renewable portfolio standards law.²¹

Burgess Biomass Plant in Berlin, New Hampshire, and the 50 MW Schiller Unit 5 Facility located in Portsmouth, New Hampshire. Although all biomass plants in New Hampshire are part of the same ISO-NE market and compete for the same fuel sources, neither of these other two facilities would receive the subsidies mandated by SB 365.

¹⁸ N.H. Rev. Stat. § 362-H:2.

¹⁹ Under the statute, this mandate extends for each EDC’s “next 6 sequential solicitations of its default service supply,” a period of roughly three years. N.H. Rev. Stat. § 362-H:2(I)(a).

²⁰ N.H. Rev. Stat. § 362-H:2(I)(a). The “Adjusted Energy Rate” mandated for these sales is “derived from the default service rates approved by the [NHPUC] in each applicable default service supply solicitation and resulting rates proceeding.” *Id.*

²¹ N.H. Rev. Stat. § 362-H:1(I) (defining the “Adjusted Energy Rate” as “80 percent of the rate . . . resulting from the default energy rate minus, if applicable, the rate component for compliance with the renewable energy portfolio standards law”). The “Default Energy Rate,” from which the “Adjusted Energy Rate” is derived, is defined as the “default service energy rate applicable to residential class customers . . . which is available to retail electric customers who are otherwise without an electricity supplier.” N.H. Rev. Stat. § 362-H:1(IV).

Default service is the full-requirements retail electric service the EDCs are required to provide to customers who do not buy from a competitive retail supplier.²² The default service rate is determined based on the results of the EDCs' solicitations for firm, all-requirements, load-following power needed to provide such full-requirements service.²³ Suppliers who bid to provide the EDCs' default energy service "are offering to provide what is fundamentally retail service down to the customer meter," and accordingly bids submitted in the default service solicitations reflect not only the cost of providing energy, but various other components such as ancillary services, line losses, and, significantly, a component designed to manage variable load risk.²⁴

The NHPUC approved the most-recent default service solicitations for PSNH for the six-month period beginning August 1, 2018 on June 15, 2018, and, on October 5, 2018, approved Unitil's rates for the six-month period beginning December 1, 2018.²⁵ Under these orders, PSNH's rate for default service to its Small customer group (which

²² N.H. Rev. Stat. § 374-F:2, I-a ("Default service' means electricity supply that is available to retail customers who are otherwise without an electricity supplier and are ineligible for transition service.").

²³ See PSNH May 9, 2018 Request for Proposals for Power Supply for Energy Service, Attachment FBW-1 at 3, N.H.P.U.C. Dkt. No. DE 18-002 (filed June 8, 2018); PSNH Energy Service Rate Setting August 1, 2018 through January 31, 2019, Small Customers, Attachment CJG-1 at 1, N.H.P.U.C. Dkt. No. DE 18-002 (filed June 8, 2018).

²⁴ *Electric Utilities: Review of Default Service Procurement Processes for Electric Distribution Utilities*, N.H.P.U.C. Dkt. No. IR 14-338, May 27, 2015 Hr'g Tr. 61-63 (May 27, 2015), Attachment JRS-R-10 (at 3) to the Rebuttal Testimony of James R. Shuckerow on behalf of PSNH, N.H.P.U.C. Dkt. No. DE 14-238 (filed Nov. 19, 2015).

²⁵ *Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order Approving Solicitation Process and Resulting Rates, Order No. 26,147, 2018 WL 3068167 (N.H.P.U.C. June 15, 2018); *Unitil Energy Sys., Inc.*, Order Approving Petition, Order No. 26,180, 2018 WL 4929445 (N.H.P.U.C. Oct. 5, 2018).

includes residential customers) is 9.412 cents/kWh. This rate includes an adder of 0.369 cents/kWh for the cost of compliance with renewable portfolio standards (RPS). Unitil's rate is 11.689 cents/kWh for residential customers, which includes a RPS adder of 0.082 cents/kWh.

The sales contemplated under SB 365's mandated power purchase agreements ("PPAs") are for the entire energy output of the eligible facilities.²⁶ Eligible facilities are required to submit a nonbinding proposed schedule of hourly net output amounts in their response to the EDC's solicitation,²⁷ but the EDC is required to submit for approval to the NHPUC all proposals from eligible facilities that conform to the statutory requirements—i.e., the EDC is not allowed to negotiate a price for the eligible facility's sales that differs from the "Adjusted Energy Rate."²⁸ Likewise, SB 365 narrowly circumscribes the scope of the NHPUC's review of the eligible facilities' PPAs, as the NHPUC may only review those PPAs "for conformity with this chapter,"²⁹ meaning that the NHPUC too lacks discretion to modify the price to anything other than the "Adjusted Energy Rate."

Finally, SB 365 requires that each EDC "recover the difference between its energy purchase costs [under the PPAs with eligible facilities] and the market energy clearing price through a non-bypassable delivery services charge applicable to all customers in the

²⁶ N.H. Rev. Stat. § 362-H:2(I)(b) (EDC's purchase is "for 100 percent of the eligible facility's net electrical output").

²⁷ N.H. Rev. Stat. § 362-H:2(II).

²⁸ N.H. Rev. Stat. § 362-H:2(III).

²⁹ N.H. Rev. Stat. § 362-H:2(IV). "Chapter" refers to Chapter 362-H of the New Hampshire Revised Statutes, which Chapter was created by SB 365.

utility's service territory."³⁰ Thus, the statute requires that PSNH and Unitil: (1) purchase the full energy output of seven specific plants at a price mandated by state law that is arbitrarily based on the cost of retail default service, (2) sell that energy into the ISO-NE market, and (3) recover from retail customers through a non-bypassable charge the difference between the price the EDCs pay to the generators and the market price for the energy. In this way, the statute mandates the payment of above-market wholesale prices, and ensures that retail customers in the EDCs' service territories will bear the cost of these above-market payments for the eligible facilities' energy.

III. Petition for Declaratory Order

SB 365 is preempted under federal law, because it sets the rate for wholesale sales of energy, a matter exclusively reserved to this Commission's jurisdiction under the Federal Power Act. Although PURPA creates an exception to this Commission's exclusive jurisdiction by allowing States to set rates for wholesale sales by QFs at the utility's avoided cost, the New Hampshire legislature did not invoke PURPA as a basis for SB 365, and did not attempt to set the rate for sales by eligible facilities in accordance with the EDCs' avoided costs. By failing to set rates in accordance with PURPA's avoided cost rules, SB 365 violates PURPA.

A. SB 365 Is Preempted by the Federal Power Act Because the Statute Impermissibly Sets Rates for Wholesale Sales of Energy

The Federal Power Act vests this Commission with exclusive jurisdiction over wholesale sales of energy. *Hughes*, 136 S. Ct. at 1291-92; 16 U.S.C. § 824(b)(1). Under

³⁰ N.H. Rev. Stat. § 362-H:2(V).

the doctrine of field preemption, the Supremacy Clause of the U.S. Constitution preempts state laws where “‘Congress has legislated comprehensively to occupy an entire field of regulation, leaving no room for the States to supplement federal law.’” *Hughes*, 136 S. Ct. at 1297 (quoting *Nw. Cent. Pipeline Corp. v. State Corp. Comm’n of Kan.*, 489 U.S. 493, 509 (1989)).³¹ Because the setting of wholesale electricity is exclusively reserved for this Commission, states’ attempts like SB 365 to set such rates are preempted under the Federal Power Act.

In *Hughes*, the Supreme Court addressed an order of the Maryland Public Service Commission requiring the state’s load-serving entities (LSEs) to enter into a twenty-year “contract for differences” with the developer of new generation that guaranteed the developer would receive different compensation than the wholesale price of capacity set by the PJM market. The Court found that Maryland’s program was preempted under the Federal Power Act because it “sets an interstate wholesale rate” distinct from the rate determined by PJM, the FERC-regulated auction market. *Hughes*, 136 S. Ct. at 1297. The contract for differences in *Hughes* differed from a traditional bilateral contract for the sale of capacity, because the LSEs did not take title to capacity under the contract and were instead providing a price guarantee to the developer. *Id.* at 1295. But that fact did not stop the Court from finding those contracts preempted, because Maryland’s program

³¹ The principal question in this case is one of field preemption, which arises where the federal government has regulated an area so pervasively as to “occup[y] a given field” such that no room is left for state regulation. *Pac. Gas and Elec. Co. v. State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 212-13 (1983); *N. Nat. Gas Co. v. State Corp. Comm’n of Kan.*, 372 U.S. 84, 97-98 (1963). Even where Congress has not occupied an entire field, preemption may also be found under the separate doctrine of conflict preemption if there is an “actual and immediate conflict between the federal and state regulations.” *N. Nat. Gas*, 372 U.S. at 97.

bypassed the mechanism FERC had chosen to set the price for sales of capacity (the PJM auction) and instead guaranteed that the developer would receive a different, state-determined price for its wholesale capacity sales to PJM, “regardless of the clearing price.” *Id.* at 1297-99.

Just like Maryland’s program in *Hughes*, SB 365 “disregards an interstate wholesale rate required by FERC” and mandates that EDCs (and after pass-through, retail customers) pay a price for the eligible facilities’ wholesale sales that is different than the FERC-determined price. The statute guarantees that eligible facilities receive prices equal to 80% of the *retail* rate for default energy service, and guarantees that these generators will receive the same compensation regardless of the ISO-NE clearing price. Indeed, New Hampshire’s intrusion on this Commission’s jurisdiction is even more stark than in *Hughes*, because the contracts mandated by SB 365 *are* for wholesale sales of energy, not contracts for differences.³²

Importantly, though the PPAs mandated under SB 365 are contracts for the sale of energy, they are not truly “bilateral” because the contract price is not the result of negotiated, arms-length bargaining between two parties (the EDCs and eligible facilities), but instead is mandated by legislative fiat pursuant to the state’s police power. *Cf. Allco Fin. Ltd. v. Klee*, 861 F.3d 82, 98 (2d Cir. 2017) (finding contracts resulting from state renewable resources solicitation were not preempted, in part because LSEs were given

³² In *Hughes*, the Court noted that Maryland had taken the position that the contract at issue was not subject to review and approval by FERC because it did not contemplate the sale of capacity outside of the auction, but instead provided a financial guarantee separate from the underlying wholesale transaction. *Id.* at 1299.

discretion whether to enter into contracts with the RFP winners).^{33, 34} Further, SB 365 makes no provision for filing the PPAs with FERC for review under section 205 of the Federal Power Act, and does not condition the PPAs' effectiveness upon FERC approval. *Cf. Allco Finance*, 861 F.3d at 99-100 (holding that bilateral capacity contracts entered pursuant to state renewable generation RFP were not preempted, because the RFP program required that any contracts be filed with FERC and were subject to FERC's approving the contracts as just and reasonable). Thus, under SB 365, the State of New Hampshire will set an arbitrary price for wholesale sales by the eligible facilities, under a process that makes no allowance for arms-length negotiation or competitive solicitation followed by FERC review and approval to determine a just and reasonable rate.

This Commission has addressed similar state attempts to set wholesale prices on several occasions, and each time has concluded that those efforts were preempted. *Connecticut Power & Light Co.* addressed whether a Connecticut statute that set the rate for sales by a resources recovery facility at a price that may have exceeded the purchasing utility's avoided cost was preempted by federal law. 70 FERC ¶ 61,012 at 61,025-26, 61,029 (1995). This Commission held that, with respect to any sales by public utilities that are not QFs, FERC has exclusive jurisdiction over wholesale rates,

³³ The *Allco* court distinguished *PPL EnergyPlus, LLC v. Solomon*, 761 F.3d 241 (3d Cir. 2014), noting that the Third Circuit found preemption in that case in part because the "utilities were 'compel[led]' to enter into capacity contracts *on terms chosen by state agencies.*" *Allco*, 861 F.3d at 100 (emphasis added).

³⁴ SB 365 states that EDCs "shall offer to purchase the net energy output of any eligible facility located in its service territory." N.H. Rev. Stat. § 362-H:2. Under New Hampshire Law, the use of the word "shall" in legislation constitutes a mandate. *Appeal of Algonquin Gas Transmission, LLC*, 186 A.3d 865, 874 (N.H. 2018) ("The use of the word 'should' allows the PUC to exercise its discretion and judgment; in contrast, the word 'shall' establishes a mandatory duty.").

and states are absolutely preempted from setting rates for wholesale sales. *Id.* at 61,030. In its Order Denying Reconsideration, this Commission noted that “PURPA gave the states a specific but limited role to set wholesale rates pursuant to the statute and the Commission’s regulations—a role that in most instances they would not otherwise have had since QF sales primarily are sales for resale in interstate commerce. In other words, states have no authority outside of PURPA to set QF rates at wholesale.” *Conn. Light & Power Co.*, 71 FERC at 61,153 (internal footnote omitted).

Similarly, in *Midwest Power*, 78 FERC at 61,244-45, this Commission held that orders of the Iowa Utilities Board requiring Midwest Power and other Iowa utilities to enter into long-term contracts from certain generators at a rate “substantially in excess of [Midwest Power’s] avoided cost” was preempted by both PURPA and the Federal Power Act. The Iowa Board expressly disclaimed reliance on PURPA, arguing that it was not attempting to set an avoided cost rate and that any contracts entered pursuant to the Iowa Board’s orders were not preempted because they could later be filed with and reviewed by this Commission. *Id.* at 61,246. The Commission rejected that argument, and found the orders were preempted under the Federal Power Act to the extent they set rates outside the bounds of PURPA for energy “sold at wholesale in interstate commerce by public utilities.” *Id.* at 61,247.

Finally, this Commission held that an order by the California Public Utilities Commission (“CPUC”) implementing a California statute that required utilities to offer to purchase energy from certain combined heat and power (“CHP”) generators at a pre-set, CPUC-determined price could only avoid preemption if the relevant generators were QFs

and the CPUC set the rates for such sales according to the utilities' avoided cost. *Cal. Pub. Utils. Comm'n*, 132 FERC ¶ 61,047 at PP 64-67, 70, *order on clarification*, 133 FERC ¶ 61,059 (2010), *reh'g denied*, 134 FERC ¶ 61,044 (2011). Otherwise, any wholesale rates set by the CPUC were preempted.

Because the New Hampshire statute purports to set the rates for wholesale sales by "eligible facilities" outside of PURPA, it is plainly preempted under this Commission's analysis in the foregoing cases.

B. SB 365 Violates PURPA's Avoided Cost Requirement and Thus Is Not Saved from Preemption

The New Hampshire legislature did not invoke PURPA as authorization for the state to set the rates for sales by eligible facilities pursuant to SB 365. The statute contains no reference to "avoided cost" or "incremental cost," and although all seven of the eligible facilities have obtained QF status, the law does not require that any seller obtain or maintain status as a QF in order to qualify for the mandatory purchase obligation created by SB 365.³⁵ Nevertheless, as the cases above hold, any attempt by the states to set rates for wholesale sales by these generators³⁶ outside the context of PURPA is plainly preempted under the Federal Power Act. Thus, SB 365 cannot escape preemption unless it complies with PURPA and this Commission's regulations enacted thereunder. Because the legislature completely ignored PURPA's avoided cost

³⁵ See N.H. Rev. Stat. § 362-H:1(V) (defining qualifications for an "Eligible Facility").

³⁶ None of the seven generators is a state or federal agency or other entity that might be excepted from this Commission's jurisdiction under Section 201 of the Federal Power Act. 16 U.S.C. § 824(f) (2012).

requirement and made no effort to set the price for the eligible facilities' sales at avoided cost, SB 365 violates PURPA and is preempted.

In determining that QFs are to be compensated at the full avoided cost rate, the Commission's PURPA-implementing regulations opted for the "maximum rate authorized by Congress." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 417-18 (1983).³⁷ But as the Commission has recognized:

[A] rate in excess of avoided cost is, by definition, a rate higher than what ratepayers would pay if the utility had generated the electric energy itself or purchased it elsewhere. By stating that states cannot impose rates in excess of avoided cost, section 210 of PURPA and the Commission's regulations balance the competing Congressional concerns of promoting cogeneration and small power production and yet not burdening ratepayers; *imposing a rate in excess of avoided cost would subsidize QFs and burden ratepayers.*

Conn. Light & Power Co., 70 FERC at 61,029 n.46 (internal citations omitted) (emphasis added). Acknowledging that "Congress did not intend QFs to have any rate benefit above a market rate level," the Commission has emphasized that the need to "ensure that QF rates do not exceed avoided cost" is "critical," because "QF rates that exceed avoided cost will, by definition, give QFs an unfair advantage over other market participants" and thereby "hurt ratepayers." *S. Cal. Edison Co.*, 70 FERC at 61,675-76 & n.14. Thus, PURPA's avoided cost requirement is a critical consumer protection requirement that ensures "consumers are not forced to subsidize QFs." *Indep. Energy Producers*, 36 F.3d at 858.

³⁷ 16 U.S.C. § 824a-3(b)(2) (providing that, in enacting its implementing regulations under PURPA, the Commission was not permitted to "provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy").

The Commission has recognized that states lack authority under PURPA to set rates for QF sales in excess of avoided cost.³⁸ *Conn. Power & Light*, 70 FERC at 61,023 (“Rates may be established by the state but only pursuant to and consistent with this Commission’s regulations under PURPA”; *id.* at 61,027-29 (states lack authority “to prescribe rates for sales by QFs at wholesale that exceed the avoided cost cap contained in PURPA”). In *Southern Cal. Edison Co.*,³⁹ the Commission acknowledged that “PURPA does not permit either the Commission, or the States in their implementation of PURPA, to require a purchase rate that exceeds avoided cost,” and held that a CPUC order violated PURPA because it failed to set a rate for avoided costs that took into account all sources able to sell to the utility. *See also Midwest Power*, 78 FERC at 61,247 (holding that orders of the Iowa Board were alternatively preempted by the Federal Power Act, or, if they set rates for QFs in excess of avoided cost, by PURPA); *see also Cal. Pub. Utils. Comm’n*, 132 FERC ¶ 61,047 at PP 67, 70 (“[W]hether a rate is filed under section 205 of the FPA for Commission approval, or is exempt from scrutiny from FPA sections 205 and 206 pursuant to the Commission regulations, the CPUC may not set rates for the sale for resale of energy and capacity by a QF that exceeds the purchasing utility’s avoided cost.”).

³⁸ The Commission’s regulations defined avoided cost as “the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, such utility would generate itself or purchase from another source.” 18 C.F.R. § 292.101(b)(6).

³⁹ 70 FERC at 61,675, 61,677-78.

As noted above, the legislature did not even attempt to set the price for these sales at avoided cost. The law simply mandates that EDCs purchase energy from eligible facilities at a price equal to 80% of the retail rate for default energy service. In contrast, the NHPUC has, since the beginning of restructuring in 1999, generally set the EDCs' avoided cost as being equal to the real-time price of energy in ISO-NE. The NHPUC reaffirmed this determination in 2016, finding that the ISO-NE real-time energy price (as adjusted for line losses, wheeling costs, and administrative costs) properly reflects the EDCs' marginal costs. *Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order No. 25,920, 2016 WL 3613349, at *51, *53, *55-56 (N.H.P.U.C. July 1, 2016). In making this finding, the NHPUC rejected an argument that the avoided cost rate for Eversource should be set based on the "costs Eversource incurs to generate electricity and make supplemental purchases to serve default service load and, following divestiture, on the results of its procurement of default service supply through a competitive RFP process."⁴⁰ The NHPUC deemed it proper to use the ISO-NE price as the measure of Eversource's avoided cost, because that was the measure that best reflected Eversource's marginal cost of energy.⁴¹ In other words, the NHPUC rejected the argument that the default service rate – the very rate upon which SB 365 relies in determining the rate to be paid for sales

⁴⁰ *Id.* at *51. The Intervenor abandoned that position midway through the proceedings, and instead contended that the avoided cost price should be calculated based on the day-ahead ISO-NE price rather than the real time price, a position that the NHPUC also rejected. *Id.* at *51, 53-56.

⁴¹ *Id.* at *53 (citing *Indus. Cogenerators [Corp.]*, 72 N.H.P.U.C. 8, 1987 WL 1501794 (Jan. 7, 1987) (utility's avoided cost determined based on costs of generating units operating on the margin)).

under the statute – reflects Eversource’s avoided cost.⁴² Until’s NHPUC-approved avoided cost for purchases under PURPA is also the ISO-NE real-time energy price.⁴³

Thus, the legislature’s determination to set the rate for eligible facility sales based on a fixed percentage of the retail rate for default energy service cannot reflect the EDCs’ avoided cost of energy, does not adopt the NHPUC’s determinations as to the EDCs’ actual avoided cost, and therefore SB 365 violates PURPA. In fact, the Commission need look no further than SB 365’s own text as proof that the law provides compensation to the generators in excess of the EDCs’ avoided cost, because the statute provides that EDCs shall recover the difference between the costs of purchasing from eligible facilities and the market-clearing price of energy in ISO-NE through a non-bypassable charge to retail customers.⁴⁴

The Commission has acknowledged that its responsibilities for supervising states’ implementation of the avoided cost requirement compel it to “ensur[e] the *process* used to calculate the per unit charge (i.e., implementation) accords with the statute and our regulations.” *S. Cal. Edison Co.*, 70 FERC at 61,677 (emphasis added). Here, the New

⁴² Though it is true that the statute sets the “Adjusted Energy Rate” at 80% of the default energy rate and thus compensates eligible facilities at something less than the *full* cost of providing default service for their sales of energy, the 20% deduction in the rate is an arbitrary figure and is not an actual determination of avoided cost.

⁴³ Until Energy Systems, Inc. Tariff for Electric Delivery Service, NHPUC No. 3, Fifth Revised Page 76. (“Rates for Qualifying Facilities 1 MW or Greater: Qualifying Facilities that have a design capacity of 1 MW or greater shall have their output metered and purchased at rates equal to the payments received by the Company from the ISO-NE, net of all charges imposed by the ISO-NE for such output, for the hours in which the Qualifying Facility generated electricity in excess of its requirements.”).

⁴⁴ N.H. Rev. Stat. § 362-H:2(V).

Hampshire legislature set the rate for these sales without employing *any process* to determine avoided costs. Such an act is plainly not a valid implementation of this Commission’s PURPA regulations, and the Commission should rule accordingly.

C. SB 365 Is Additionally Preempted with Respect to Sales from One of the Eligible Facilities, Pinetree Power Tamworth LLC, Because the Commission Has Terminated the Mandatory Purchase Obligation as to This Generator

One of the “eligible facility” generators, Pinetree Power Tamworth, LLC, has a net capacity of 21.5 MW. In April 2010, the Commission issued an order pursuant to section 210(m)⁴⁵ of PURPA terminating PSNH’s mandatory purchase obligation on a service territory-wide basis for QFs with a net capacity in excess of 20 MW. *Pub. Serv. Co. of N.H.*, 131 FERC ¶ 61,027 at P 2 (2010). Thus, under that order, New Hampshire is preempted from ordering any mandatory purchases from this facility by PSNH under PURPA, even if (contrary to fact) SB 365 were an otherwise proper implementation of PURPA that correctly set an avoided cost rate.

IV. Request for Expedited Action

NERA requests that the Commission issue a decision on this Petition on or before February 1, 2019, so that the unlawful contracts are not permitted to go into effect. SB 365 became effective immediately upon its enactment on September 13, 2018, and applies to the “next 6 sequential solicitations of [each impacted EDC’s] default service supply after the [statute’s] effective date.”⁴⁶ PSNH’s next default service supply solicitation – the first subject to SB 365 – begins on November 8, for the six-month

⁴⁵ 16 U.S.C. § 824a-3(m).

⁴⁶ N.H. Rev. Stat. § 362-H:2(I)(a).

period beginning February 1, 2019.⁴⁷ Thus, the first PPAs with eligible facilities priced according to the mandatory and unlawful “Adjusted Energy Rate” would go into effect on February 1, 2019, and PSNH’s compliance with the mandates set forth in SB 365 must be underway before November 8. Expedited action is thus warranted because, as this Commission has emphasized, the appropriate time to challenge a contract as violative of PURPA or preempted by the Federal Power Act is *before* the contract has been executed. In similar circumstances, the Commission has not hesitated to act prior to contract execution to avoid subsequently disturbing the expectations of the parties. *E.g., S. Cal. Edison Co.*, 70 FERC at 61,677-78; *Midwest Power*, 78 FERC at 61,247-48. Moreover, there is no reason to delay a decision until after the NHPUC has reviewed the contracts, because the statute denies the NHPUC any authority to set a different rate than the one the legislature has chosen.⁴⁸

V. CONCLUSION

For the foregoing reasons, NERA respectfully requests that the Commission issue a declaratory order finding that (1) SB 365 is preempted under the Federal Power Act because it impermissibly sets rates for wholesale sales of energy; (2) SB 365 is additionally preempted because it violates this Commission’s regulations and sets a rate for sales in excess of avoided cost, in violation of PURPA; and, (3) as to PSNH, any

⁴⁷ The NHPUC approved PSNH’s most recent solicitation for default service supply on June 15, 2018 (covering the six-month period running from August 1, 2018 through January 31, 2019). *Pub. Serv. Co. of N.H. d/b/a Eversource Energy*, Order Approving Solicitation Process and Resulting Rates, Order No. 26,147, 2018 WL 3068167 (N.H.P.U.C. June 15, 2018).

⁴⁸ N.H. Rev. Stat. § 362-H:2(IV).

mandate requiring purchases from QFs with a net generation in excess of 20 MW is pre-empted by Order of this Commission under section 210(m) of PURPA.

Respectfully submitted,

/s/ David B. Raskin

David B. Raskin
Richard L. Roberts
Nathaniel Brower
Steptoe & Johnson LLP
1330 Connecticut Ave, NW
Washington, DC 20036
(202) 429-3000
draskin@steptoe.com
rroberts@steptoe.com
nbrower@steptoe.com

/s/ Marc Brown

Marc Brown, President
New England Ratepayers Association
PO Box 542
Concord, NH 03302
(603) 369-4301
marc@neratepayers.org

On behalf of the
New England Ratepayers Association

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