

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTORS TO REJECT THE POWER PURCHASE
AGREEMENT AND OPTION AGREEMENT WITH PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE (D/B/A EVERSOURCE ENERGY) *NUNC PRO TUNC*
TO THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

Burgess BioPower, LLC (“Burgess”) and Berlin Station, LLC (“Berlin”), the debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby submit this *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement and Option Agreement with Public Service Company of New Hampshire (d/b/a Eversource Energy) Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* (the “Motion”) seeking entry of an order, substantially in the form of the proposed order attached hereto as **Exhibit A** (the “Proposed Order”).

In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider and adjudicate the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors’ corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

meaning of 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are Sections 105(a) and 365(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of final orders or judgments with respect to the Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Pursuant to Local Rule 9006-1(c)(i), “[u]nless the Fed. R. Bankr. P. or [the] Local Rules state otherwise, all motion papers shall be filed and served in accordance with Local Rule 2002-1(b) at least fourteen (14) days prior to the hearing date.” Del. Bankr. L.R. 9006-1(c)(i). Bankruptcy Rule 2002 lists motions for which a twenty-one day notice period is required, but does not list motions for rejection. Therefore, the applicable notice period for the Motion is fourteen days.

PRELIMINARY STATEMENT

5. Public Service Company of New Hampshire, doing business as Eversource Energy (“Eversource”) materially breached the Amended and Restated Power Purchase Agreement entered into by and between Berlin and Eversource, dated as of May 18, 2011 and amended on November 19, 2019 and August 18, 2022 (the “PPA,” a true and accurate copy of which is attached hereto as **Exhibit B**), by failing to make a required payment in excess of \$5 million that was due on January 23, 2024.

6. Eversource's failure to timely cure its material breach led the Debtors to terminate the PPA and the Purchase Option Agreement by and between Eversource, Berlin, and Burgess, dated as of November 25, 2013 (the "Option Agreement," a true and accurate copy of which is attached hereto as **Exhibit C**), under the terms of those agreements and prior to the commencement of these cases. Eversource, however, continues to unlawfully withhold payments due to the Debtors while refusing to recognize their breach of the PPA and the Debtors' valid termination of the PPA and the Option Agreement.

7. The Debtors bring this Motion to the extent Eversource continues to dispute termination of the PPA and/or Option Agreement and the Bankruptcy Court determines that the Debtors' termination was invalid.

BACKGROUND

A. General

8. The Debtors commenced the above-captioned cases (the "Chapter 11 Cases") by filing voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code on February 9, 2024 (the "Petition Date").

9. The Debtors are authorized to operate their business and manage their properties as debtors in possession, pursuant to Bankruptcy Code Sections 1107(a) and 1108. As of the date of the Motion, no trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

10. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in detail in the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of*

the Debtors' Chapter 11 Petitions and First Day Pleadings [D.I. 4] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.²

11. The Debtors own and operate a 75-megawatt biomass-fueled power plant (the "Facility") located on an approximately 62-acre site in Berlin, New Hampshire (the "Facility Site"). Berlin owns the Facility and the Facility Site, both of which it redeveloped and retrofitted between 2011 and 2013 to produce renewable energy. Berlin leases the Facility to Burgess, which holds the necessary regulatory licenses for operation of the Facility. The Facility went into service on November 25, 2013.

12. The Facility consistently ranks among the most efficient and well-run biomass plants in the country. The Facility's capacity factor – a measurement of run time and efficiency – averages over 90 percent each year, consistently surpassing the industry average of around 58 percent. Each year, the Facility undergoes a comprehensive third-party evaluation of its management and operations; those reports have repeatedly confirmed that the plant's management team performs well above industry norms.

13. The Facility has been running for more than a decade, supplying power to energy users in New England. It is the fourth largest power generator in New Hampshire and the only one that uses locally sourced fuel. The Facility generates enough energy to power around 67,000 homes (i.e., the equivalent of approximately 10% of all homes in New Hampshire). The Facility is as an important resource in helping the State of New Hampshire achieve the statutory mandates set forth in the renewable portfolio standards, RSA 362-F, which require that approximately 25 percent of the state's electricity come from renewable resources.

² The First Day Declaration and other relevant case information are available on the following website maintained by the Debtors' proposed claims and noticing agent, Epiq: <https://dm.epiq11.com/Burgess>

B. The Power Purchase Agreement and Option Agreement

14. Pursuant to the PPA, the Debtors agreed to sell to Eversource energy, capacity, ancillary services, and associated renewable energy certificates produced by the Facility (“RECs” and, together with energy, capacity, and ancillary services, “Products”) at variable prices for a 20-year term, expiring on November 25, 2033.

15. Specifically, the PPA required the Debtors to sell and deliver to Eversource 100% of all Products produced by the Facility – other than capacity and RECs – at the price of \$69.80 per megawatt hour, adjusted for variation of biomass fuel costs, and defined as “Energy” in the PPA. For annual Energy production in excess of 500,000 megawatt hours (which accounts for approximately 98% of the Facility’s capacity), the parties calculate an invoice adjustment based on the difference between the contract price and the Average LMP Price (as defined in the PPA) which then is added to invoices for the Facility as either a credit or an additional charge to Eversource depending on whether the value is negative (credit to Eversource) or positive (charge to Eversource). In the final year of the PPA, Eversource is not required to buy any Energy in excess of 500,000 megawatt hours.

16. The PPA also required Eversource to purchase 400,000 RECs at a fixed cost. Additionally, the PPA required the Debtors to sell and deliver all Capacity (as that term is defined in the PPA)³ at stipulated rates in the PPA. The Debtors have been, essentially, a captive supplier to Eversource.

17. The PPA also granted Eversource a burdensome “right of first refusal” in the event Berlin would receive a bona fide written offer from a third-party to buy all or any part of the

³ The Facility’s “Capacity” refers to the Facility’s capacity supply obligation as a result of its participation and clearing in an ISO New England Inc.-administered capacity auction, reconfiguration capacity auction, or any successor or other capacity supply auction, marketplace, or agreement.

Facility. PPA, Art. 7. Berlin would have to submit any written offer to Eversource. *Id.* The PPA required that the offer state that Eversource may acquire all or such portion of the Facility during a 180-day period after Berlin has tendered the offer to Eversource. *Id.* If Eversource declined to purchase all or such portion of the Facility, Berlin would have been permitted to make the sale to the bona fide third-party purchaser, provided the purchaser assumed all rights and obligations of Berlin under the PPA (including the rights and obligations related to the Cumulative Reduction Factor provisions in the PPA). *Id.*

18. In connection with the PPA, Eversource and the Debtors entered into the Option Agreement, which purported to grant Eversource the option to purchase the Facility Site in the 120-day period following the end of the term of the PPA in 2033. In connection with and as required by the PPA, Eversource, Berlin, and Burgess entered into the Option Agreement, after approval of the PPA and its Appendices by the New Hampshire Public Utilities Commission (“NHPUC”) and recorded the Option Agreement in the Coos County Registry of Deeds on November 25, 2013, when the plant began commercial operations. The strike price of the option would have been the fair market value of the Facility and Facility Site on the exercise date, less the accumulated amount of the CRF (as defined below) upon the conclusion of the term of the PPA in 2033.

19. The Option Agreement further required that the Debtors provide Eversource with access to all documents and records in their possession regarding the Facility and its operation, permit Eversource to inspect the Facility at any point prior to exercise of the option, obtain and maintain a policy of title insurance covering the Facility and the Facility Site, and keep and maintain the Facility in a functioning operating condition and in a good state of maintenance and repair, among other ongoing obligations. Option Agreement, §§ 5-6.

C. The Cumulative Reduction Factor

20. The PPA contained a one-way price ratchet that, as of the Petition Date, benefitted only Eversource: the Cumulative Reduction Factor (the “CRF”). The CRF references two prices: (i) an “Adjusted Base Price,” which is the price that Eversource pays the Debtors for Energy provided by the Debtors to Eversource, and (ii) a reference price called the “ISO-NE Energy Price,” which is the day-ahead price for the submarket where the Facility is located and is administered by ISO New England Inc. (“ISO-NE”). PPA, §§ 1.2, 1.35. Under the CRF provision, when the Adjusted Base Price for Energy provided by the Debtors exceeded the ISO-NE Energy Price, a negative adjustment was made; when the Adjusted Base Price was less than the ISO-NE Energy Price, a positive adjustment was made. PPA, § 6.1.4(a).⁴ The cumulative value of these adjustments is the “Cumulative Factor,” and a net negative Cumulative Factor is a “Cumulative Reduction.” *Id.*

21. If the amount of Cumulative Reduction exceeded \$100 million in any Operating Year of the PPA’s term except the last year (i.e., Operating Year 2033), Eversource could take a credit against certain payments for Energy delivered in the subsequent Operating Year by the amount of that excess. PPA, § 6.1.4(c) (the “Excess CRF”).⁵ Specifically, to the extent the Cumulative Reduction exceeded \$100 million at the end of an Operating Year, Eversource was entitled to credit such Excess CRF against payments for Energy (but not any other Products, such

⁴ The Cumulative Factor is calculated hourly.

⁵ An “Operating Year” runs from December 1 to November 30 of the following year. Thus, November 30, 2023 is the end of the most recent Operating Year, and the current Operating Year commenced on December 1, 2023. Thus, were it not for the filing of these Chapter 11 cases, Eversource contends that it could begin crediting the Excess CRF beginning January 2024 for Energy delivered in December 2023.

as Capacity and RECs) produced in the following Operating Year on a one-twelfth per month basis, until the Cumulative Reserve is reduced to \$100 million. *Id.*⁶

22. The Cumulative Reduction reached \$100 million in the Facility's sixth year of operations, in September 2019. Through a series of legislative enactments by the State of New Hampshire, the State of New Hampshire provided two moratoria on the application of any credits based on the Excess CRF favoring Eversource. During these moratoria, the CRF continued to accrue pursuant to the PPA. The Debtors attempted to obtain legislative relief to eliminate the Debtors' obligations for accrued Excess CRF during the prior moratoria last year. Although the New Hampshire legislature passed a bill granting that relief, it was vetoed by the Governor of New Hampshire on August 18, 2023, and the legislature failed to override that veto in October. As a result, the most recent moratorium expired on November 30, 2023.

23. Eversource has asserted that, as of the end of the last Operating Year (November 30, 2023), the CRF balance was \$172,184,160.39 and as adjusted by the Excess MWh Adjustment amount, the CRF was \$171,542,675.07. Absent the termination of the PPA (or the rejection of the PPA, as applicable) and the filing of these Chapter 11 Cases, pursuant to the PPA, as of January 2024, Eversource purported to have the right to credit the Excess CRF in one-twelfth installments against monthly payments to Berlin for Energy (but not any other Products) delivered after December 1, 2023, in one-twelfth installments. PPA, § 6.1.4(c). The Debtors expect that, had the PPA not been terminated and assuming no rejection of the PPA, Eversource would seek to credit over \$6 million from Berlin's monthly invoices for the current Operating Year (ending on

⁶ On the other hand, "[a] net positive Cumulative Factor will bestow no rights or obligations on either Party to [the PPA]." PPA, § 6.1.4(a). Accordingly, if the contractually-defined referenced price for Energy exceeds the price in the PPA, resulting in a positive Cumulative Factor, Berlin receives no incremental benefit in the sale price of Energy to Eversource. Nor is there a reciprocal right for Berlin to receive supplemental energy payments where Eversource has made payments for Energy below the ISO-NE Energy prices.

November 30, 2024), which would exceed the anticipated amount of the Debtors' monthly invoices for Energy for the foreseeable future.

D. Eversource's Breach of the PPA and Debtors' Subsequent Termination of the PPA and Option Agreement

24. By letter dated January 16, 2024, Eversource confirmed to the NHPUC that, "according to the terms of the PPA [Eversource] can only deduct repayment of the excess of the CRF from the revenue produced from Burgess' energy generation. The payments cannot be taken from capacity or REC revenue." First Day Declaration, Ex. E. Eversource's statements accurately reflected the PPA provision that allows Eversource to apply Excess CRF from a prior Operating Year as credits against Energy payments only in a subsequent Operating Year. *See* PPA, § 6.1.4(c).

25. Despite its January 16, 2024 letter and the clear language of the PPA, Eversource failed to pay Berlin \$5,151,119.88 due for NH Class I RECs as required on January 22, 2024. On January 23, 2024, Eversource provided the Debtors a "revised" invoice that revealed it had unilaterally and unlawfully applied Excess CRF as a credit against payments due to the Debtors for RECs and Capacity. Eversource's failure to pay \$5,151,119.88 due for NH Class I RECs and \$336,707.00 due as a Capacity payment was a breach of its payment obligations under § 12.1.1 of the PPA. Also on January 23, 2024, Eversource filed a statement with the NHPUC admitting that it had withheld payments due for RECs and Capacity: "Following a further review of [the PPA], the Company has very recently decided to set-off against payments for the [RECs], which were received within the last week . . . in addition to Capacity and Energy payments."

26. On January 23, 2024, the Debtors provided written notice to Eversource of this breach and noted that if Eversource did not cure its non-payment within seven business days, such non-payment would constitute an Event of Default under the PPA. Eversource failed to timely cure its non-payment.

27. Instead, on January 25, 2024, Eversource sent a letter to the Debtors disputing that it had breached the PPA and purporting to invoke inapplicable billing dispute provisions in the PPA. Notably, in its January 25 letter, Eversource adopted an untenable interpretation of the PPA that directly contradicted the interpretation that Eversource had shared with the NHPUC on January 16, 2024.

28. Because Eversource failed to cure its breach, on February 8, 2024, the Debtors provided written notices to Eversource, notifying it that (a) an Event of Default had occurred under the PPA, and (b) the Debtors have terminated the PPA and the Option Agreement pursuant to the terms thereof. At the time of breach, Eversource was on notice of the Debtors' financial strain. Eversource was aware that failure to make the required payments for the REC invoice and Capacity would have significant adverse effects on the Debtors and the viability of their business. Eversource's reliance on inapplicable sections of the PPA to concoct a sham billing dispute serves only to frustrate the Debtors' ability to sell power to another company for just compensation, thus driving the Debtors further into financial distress.

E. Rejection of the PPA and Option Agreement in the Event Termination Is Found to be Ineffective.

29. As noted, the Debtors seek rejection of the PPA and Option Agreement as Eversource has disputed its breach, and therefore the Debtors' termination of the agreements. In the event the Bankruptcy Court determines that the Debtors' termination was invalid – an issue it need not reach at this juncture – then *nunc pro tunc* rejection of the agreements is warranted as the agreements are burdensome and would cripple the Debtors' ability to reorganize successfully.

30. Prior to the Petition Date, the Debtors and their advisors analyzed the executory contracts to which they are parties, including the PPA and Option Agreement, and determined that operating the Facility under the PPA would not be viable once Eversource began exercising its

purported rights related to the CRF. Quite simply, the Debtors would derive no income from future Energy sales to Eversource under the PPA for the following contract year. The Debtors would effectively have to provide Energy to Eversource for free while still incurring substantial expenses for biomass fuel, employee wages and benefits, operating and administrative expenses, and to make contractual debt and interest payments. In addition, because the CRF provisions are embedded in the pricing terms of the Option Agreement, any effort to market or sell the Facility to maximize value is effectively frozen. The reality is that the Debtors cannot continue to operate, sell, or restructure the business under the combined weight of the PPA (including the right of first refusal set forth therein) and Option Agreement.

31. Facing this inextricable dilemma, the Debtors on multiple occasions attempted to negotiate amendments to the PPA with Eversource but were rebuffed. The Debtors were left with two options: (a) allow their business to collapse under the strain of the CRF provision, shuttering an operationally sound power plant or (b) pursue a restructuring of its debts and obligations or seek a fair market sale of the business through a Chapter 11 reorganization.

32. Accordingly, in the exercise of their business judgment, the Debtors determined that continuing to operate under the PPA and Option Agreement would be unduly burdensome to the Debtors' estates. Instead of selling the Facility's Products to Eversource pursuant to the PPA, the Debtors intend to sell electricity through the open market to ISO-NE's electric grid immediately and pursue a new power purchase agreement or agreements to maximize the value of the Debtors and their estates.

RELIEF REQUESTED

33. The Debtors have validly terminated the PPA and the Option Agreement, as set forth above. The Debtors bring this Motion seeking confirmation that they are no longer bound

by the PPA and the Option Agreement by rejecting those agreements. The Debtors request entry of an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, authorizing the Debtors to reject the PPA and Option Agreement *nunc pro tunc* to the Petition Date, and for related relief, including requiring Eversource to cooperate with the Debtors to effectuate the rejection of the PPA and the Option Agreement by, among other things, executing any required regulatory documents.

BASIS FOR RELIEF REQUESTED

34. Section 365(a) of the Bankruptcy Code permits a debtor in possession, subject to the Court's approval, to "reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). An executory contract is one "that neither party has finished performing." *Mission Prod. Holdings v. Tempnology, LLC*, 139 S. Ct. 1652, 1657 (2019) (citing 11 U. S. C. §365(a)); *see Enter. Energy Corp. v. United States (In re Columbia Gas Sys.)*, 50 F.3d 233, 239 (3rd Cir. 1995) (holding that an executory contract is "'a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other'") (quoting *Sharon Steel Corp. v. National Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989)). The ability of a debtor in possession to reject executory contracts "is vital to the basic purpose of a Chapter 11 reorganization, because rejection can release the debtor's estate from burdensome obligations that can impede a successful reorganization." *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984).

35. Further, an executory contract must be assumed or rejected in its entirety. *Sharon Steel Corp. v. National Fuel Gas Distribution Corp.*, 872 F.2d 36, 41 (3d Cir. 1989). Two separately executed documents must be assumed or rejected together if the parties intended them

to constitute one agreement. *Philip Servs. Corp. v. Luntz (In re Philip Servs. (Del.), Inc.)*, 303 B.R. 574, 576-577 (D. Del. 2003). Under New Hampshire law, whether two agreements should be considered one indivisible contract depends on the intent of the parties, as shown by the language and nature of the contract. *Ellis v. Candia Trailers & Snow Equip.*, 164 N.H. 457, 464 (2012); see *Kidd v. New Hampshire Traction Co.*, 74 N.H. 160, 170 (1907) (explaining that whether two agreements “form a single, indivisible contract” turns on “the intention of the parties as shown by the terms and formal character of the documents which they used to express their intention, when read in the light of the circumstances under which the documents were made”).

36. To reject a contract under Section 365(a), a debtor in possession must satisfy the “business judgment test” by demonstrating that the rejection will benefit the bankruptcy estate. *Sharon Steel Corp.*, 872 F.2d at 39-40 (quoting *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987); see also *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. at 847-48 (Bankr. W.D. Pa. 1987) (“Therefore, in determining the propriety of the debtor’s decision to reject the [electrical supply contract], we are not free to deviate from a traditional business judgment analysis and weigh the effect of rejection on West Penn Power or its customers.”) (citing *In re Chi-Feng Huang*, 23 B.R. 798, 801-02 (Bankr. App. Panel 9th Cir. 1982)). “A debtor’s decision to reject an executory contract must be summarily affirmed unless it is the product of ‘bad faith, or whim or caprice.’” *In re Extraction Oil & Gas*, 622 B.R. 608, 615 (Bankr. D. Del. 2020) (quoting *In re TWA*, 261 B.R. 103, 121 (Bankr. D. Del. 2003)).

37. Rejection of a contract under Section 365(a) constitutes a breach of the contract. 11 U.S.C. § 365(g); see *Mission Prod.*, 139 S. Ct. at 1657-58 (“A rejection breaches a contract but does not rescind it.”); *In re Exide Techs.*, 607 F.3d 957, 967 (3d Cir. 2010) (explaining that a rejection does not amount to an “avoidance, rescission, or termination”) (internal quotations

omitted). When a debtor breaches a contract by rejecting it, the counterparty acquires a pre-petition claim for damages, which may be satisfied and discharged together with all claims against the estate. *See In re Richendollar*, No. 04-70774, 2007 Bankr. LEXIS 1188 at *21, 2007 WL 1039065 (Bankr. N.D. Ohio Mar. 31, 2007) (“The purpose of section 365(g) is to make clear that, under the doctrine of relation back, the other party . . . to a contract that has not been assumed [under] Section 365(g) is simply a general unsecured creditor.”) (quoting 3 Collier on Bankruptcy § 365.09[1] (15th ed. 2006)). With respect to energy contracts, rejection under Section 365(a) does not require approval from the Federal Energy Regulatory Commission because such rejection is not a change of the “filed rate” – it is simply a breach.⁷ *In re Extraction Oil & Gas*, 622 B.R. at 625.

A. The PPA and the Option Agreement Are Executory Contracts.

38. The PPA is an executory contract because substantial performance remains outstanding on both sides of the agreement. Berlin must sell and deliver to Eversource 100% of all Energy produced at the Facility, and nearly all its Capacity and RECs, until the term of the PPA ends in 2033. And Eversource must accept that Energy and continue paying Berlin Station for such Energy, Capacity, and RECs. Moreover, the Right of First Refusal in the PPA entitles Berlin to pursue a sale of the Facility in the future to a third party, and gives Eversource the right to purchase the Facility itself on equally favorable terms as those offered to the third party.

⁷ The Federal Energy Regulation Commission (“FERC”) itself has disclaimed any jurisdiction over the rejection of an executory contract during bankruptcy. *See In re Extraction Oil & Gas*, 622 B.R. at 624 (“[T]he Commission neither presumes to sit in judgment of rejection motions nor seeks to abrogate the role of adjudicating bankruptcy proceedings. The Commission recognizes that rendering a determination on rejection motions is solely within the province of the bankruptcy court.”) (quoting *ETC Tiger Pipeline, LLC*, 171 F.E.R.C. P61,248, 62828 (F.E.R.C. June 22, 2020)); *see also Gulfport Energy Corp. v. FERC*, 41 F.4th 667, 682 (5th Cir. 2022) (noting FERC’s stated position “that the agency neither presumes to sit in judgment of rejection motions nor seeks to arrogate the role of adjudicating bankruptcy proceedings”) (internal quotations omitted).

39. Bankruptcy courts have found that energy agreements like the PPA are executory. *See, e.g., In re Monroe Well Service, Inc.*, 83 B.R. 317, 320 (Bankr. E.D. Pa. 1988) (finding that power purchase agreements between debtors and utility company were executory contracts because, unlike individual homeowners who can cancel utility services at any time, “the debtors obligated themselves to purchase a certain minimum amount of service each month from LP&L and LP&L in turn agreed to meet the debtors’ power needs”); *In re Northwestern Corp.*, 2004 Bankr. LEXIS 1022, at *4 (Bankr. D. Del. July 23, 2004) (“The PPA is an executory contract which the Debtor may assume or reject.”); *In re Hawaiian Springs, LLC*, 2018 Bankr. LEXIS 2821, at *9, *17 (Bankr. D. Hawaii Sept. 17, 2018) (finding that the debtor’s power purchase agreement was an executory contract under Section 365).

40. Although the Option Agreement is executory merely by being part and parcel of the PPA,⁸ it too contains future obligations and is an executory contract. The Debtors took on various contractual obligations that remain in effect through 2024 (i.e., in the 120-day period following the 20-year term of the PPA), including to maintain title insurance, subordinate lienholders other than Eversource, and provide records to Eversource upon request. The Debtors also agreed to relinquish – through such period – the right to revoke their offer to sell the Facility Assets (as defined in the Option Agreement) to Eversource. *See In re Waldron*, 36 B.R. 633, 637 (Bankr. S.D. Fl. 1984) (finding option contract executory based in part on “[t]he Debtors’ forbearance of their right to revoke their offer”).

41. Furthermore, if Eversource were to exercise its option (i.e., in the 120-day period following the 20-year term of the PPA), obligations would arise on both sides: the Debtors would be required to “use diligent and good faith efforts” to transfer ownership of the Facility and the

⁸ The Debtors reserve their right to assert that the Option Agreement is integrated into and part of the PPA, and therefore deemed rejected along with the PPA.

Facility Site to Eversource within 180 days, and Eversource would have to pay for these assets. These contingent transfer and payment obligations are the heart of the Option Agreement. Bankruptcy courts have consistently found that unexercised option contracts containing essential contingent obligations, like this one, are executory until the expiration of the contingency. *See, e.g., In re Kellstrom Indus.*, 286 B.R. 833, 834-35 (Bankr. D. Del. 2002) (holding that unexercised right of first refusal was executory contract appropriate for rejection under Section 365(a)); *In re Carlisle Homes, Inc.*, 103 B.R. 524, 535 (Bankr. D. N.J. 1988) (holding that unexercised option agreement was executory contract appropriate for rejection under Section 365(a)); *In re G-N Partners*, 48 B.R. 462, 465-66 (Bankr. D. Minn. 1985) (same).

B. Rejection of the PPA and Option Agreement Is a Proper Exercise of the Debtors' Business Judgment.

42. The PPA and the Option Agreement are burdensome contracts and their rejection would benefit the bankruptcy estates.

43. The PPA's CRF provisions will effectively allow Eversource to obtain Energy from Berlin without paying for it. Eversource asserts that the CRF amount, as of the end of the last Operating Year, was \$171,542,675.07. Eversource will seek to deduct one-twelfth of the Excess CRF (i.e., amounts over \$100 million) from each of its monthly payments to Berlin for Energy starting in January 2024, until the CRF amount drops below the \$100 million cap (i.e., about \$6.4 million per month). Thus, Eversource's crediting of the CRF effectively means that Berlin would receive no payments for Energy delivered commencing in December 2023. The Debtors would have no choice but to shutter the Facility – just as the Northeast moves into high energy demand months.

44. The Option Agreement is also a burden on the bankruptcy estates and an impediment to reorganization and the potential sale of the Debtors' assets.⁹ The specter of Eversource asserting any right to exercise the purchase option, and acquiring the Facility Assets at a discount of \$172 million, would destroy the value of the bankruptcy estates and prevent the Debtors from maximizing the value of their assets for the benefit of the bankruptcy estate and successfully reorganizing.

45. Company management for the Debtors, in the exercise of their duties, reviewed the PPA and Option Agreement in consultation with internal management and advisors. Based on that review, the Debtors determined that Berlin could not survive as an operating business if the PPA or the Option Agreement (in each case, to the extent not already validly terminated) is not rejected under Section 365(a), as any crediting of the Excess CRF against Energy payments will vitiate Berlin's cash flow, leaving it without payment for production of Energy.

C. Nunc Pro Tunc Relief to the Petition Date Is Warranted Under the Circumstances.

46. Bankruptcy courts may grant retroactive rejection of an executory contract under Sections 105(a) and 365(a) of the Bankruptcy Code based on a balancing of the equities of the case. *See, e.g., In re Chi-Chi's, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (acknowledging that a bankruptcy court may approve a rejection retroactive to the date the motion is filed based on the equities in the case); *In re Cafeteria Operators, L.P.*, 299 B.R. 384, 394 (Bankr. N.D. Tex. 2003) (granting retroactive relief for contract rejection where debtors were "receiving no benefit" from the lease and the contract counterparties "had unequivocal notice of Debtors' intent to reject prior to the filing of the Motions").

⁹ The Option Agreement constitutes a prepetition general unsecured claim and Berlin intends to seek the discharge of such claim, along with all other general unsecured claims, in connection with its Chapter 11 plan.

47. Based on the equities of this case, the Court should order that the effective date of the rejection of the PPA and the Option Agreement is the Petition Date (i.e., the date this Motion was filed after giving effect to the termination notices sent prior to the commencement of the cases).

48. The Debtors are in a precarious and unsustainable position: Eversource has choked off a substantial revenue stream while refusing to recognize the Debtors' valid termination of the PPA and the Option Agreement, jeopardizing the Debtors' ability to continue their business operations and pursue reorganization in Chapter 11. Allowing rejection of the PPA and Option Agreement *nunc pro tunc* will provide certainty to the Debtors and any counterparties that may purchase energy products from them in the coming days and weeks, and would therefore benefit the bankruptcy estates and creditors.

REQUEST FOR WAIVER OF STAY

49. Bankruptcy Rule 6004(h) provides that any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." The Debtors submit that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein. Accordingly, the Debtors maintain that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

RESERVATION OF RIGHTS

50. Nothing contained in this Motion or any actions taken by the Debtors pursuant to the relief granted in the Order is intended or should be construed as: (a) an admission as to the validity of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim

against the Debtors; (c) a waiver of any claims or causes of action which may exist against any creditor or interest holder, including with respect to any claim or cause of action that the Debtors may have against Eversource resulting from, among other things, its prepetition breach of the PPA; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) an admission that a contract is, in fact, executory and/or not terminated; (f) a request for approval, assumption, or adoption of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code; or (g) a waiver or limitation of any of Debtors' rights under the Bankruptcy Code or any other applicable law.

NOTICE AND NO PRIOR REQUEST

51. Notice of the Motion has been or will be provided to (a) the U.S. Trustee (Attn: Jane M. Leamy); (b) the holders of the twenty (20) largest unsecured claims against each Debtor; (c) counsel to Deutsche Bank Trust Company Americas in its capacity as Collateral Agent, Hogan Lovells LLP; (d) counsel to the DIP Lenders and the Senior Secured Noteholders, Greenberg Traurig, LLP; (e) Berlin Biopower Investment Fund, LLC, with a copy to Murray Plumb & Murray; (f) Greenline CDF Subfund XVIII LLC, with a copy to Kutak Rock LLP, U.S. Bancorp Community Development Corporation and Leverage Law Group, LLC; (g) Public Service of New Hampshire d/b/a Eversource Energy; (h) the United States Attorney's Office for the District of Delaware; (i) the United States Attorney's Office for the District of New Hampshire; (j) the United States Environmental Protection Agency; (k) the Nuclear Regulatory Commission; (l) the United States Department of Energy; (m) the Federal Energy Regulatory Commission; (n) New Hampshire Department of Environmental Services; (o) New Hampshire Public Utilities Commission; (p) New Hampshire Site Evaluation Committee; (q) New Hampshire Department of Energy; (r) City of Berlin; (s) ISO New England, Inc.; (t) the United States Securities and

Exchange Commission; (u) the Internal Revenue Service; and (w) any party that has requested notice pursuant to Bankruptcy Rule 2002.

52. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form of the Proposed Order attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems appropriate under the circumstances.

Dated: February 9, 2024

/s/ Chantelle D. McClamb

Chantelle D. McClamb (No. 5978)

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EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

BURGESS BIOPOWER, LLC, *et al.*¹

Debtors.

Chapter 11

Case No. 24-10235 (LSS)
(Joint Administration Requested)

Re: D.I.

**ORDER (I) AUTHORIZING THE DEBTORS TO REJECT THE POWER PURCHASE
AGREEMENT AND OPTION AGREEMENT WITH PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE (D/B/A EVERSOURCE ENERGY) *NUNC PRO TUNC*
TO THE PETITION DATE AND (II) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Reject the Power Purchase Agreement and Option Agreement with Public Service Company of New Hampshire (d/b/a Eversource Energy) Nunc Pro Tunc to the Petition Date and (II) Granting Related Relief* (the “Motion”);² and upon the *Declaration of Dean Vomero Pursuant to 28 U.S.C. § 1746 in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*; and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (c) the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) the Court may enter a final order consistent with Article III of the United States Constitution; and upon the record herein; and after due deliberation thereon; and it appearing that sufficient notice of the Motion has been given and that no other further notice is necessary; and good cause appearing therefor; it is hereby

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number are: Burgess BioPower, LLC (0971) and Berlin Station, LLC (1913). The Debtors’ corporate headquarters are located at c/o CS Operations, Inc., 631 US Hwy 1, #300, North Palm Beach, FL 33408.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The PPA and the Option Agreement (collectively, the “Rejected Contract”) is hereby rejected effective as of the commencement of the Chapter 11 Cases. For the avoidance of doubt, the Large Generator Interconnection Agreement is not a Rejected Contract.
3. If the Court later determines that the Debtors terminated the Rejected Contract prior to the Petition Date, such termination supersedes the rejection allowed pursuant to this Order.
4. Eversource must file a proof of claim by the later of (i) the date that is thirty (30) days following entry of this Order and (ii) the deadline established for creditors other than governmental units to file proofs of claims in the Chapter 11 Cases.
5. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, including with respect to any claim or cause of action that the Debtors may have against Eversource resulting from, among other things, its prepetition breach of the PPA; (iv) an admission that a contract is, in fact, executory and/or not terminated; (v) an approval, assumption, or adoption of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code; or (vi) a waiver or limitation of any of Debtors’ rights under the Bankruptcy Code or any other applicable law.
6. The Debtors are authorized to take all actions that may be necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Eversource is hereby ordered to cooperate with the Debtors to effectuate the rejection of the Rejected Contract, including without limitation by completing and executing any and all forms necessary to transfer the Lead Participant or Lead Market Participant role (as those terms are defined in the PPA and by New England Power Pool or ISO New England Inc. (“ISO-NE”)) for Berlin’s participation in ISO-NE as both an energy and a capacity resource to a new Lead Market Participant of Berlin’s choosing, including but not limited to executing ISO-NE’s Resource Lead Market Participant Change Request form and arranging for transfer of the Lead Participant listed for Berlin within ISO-NE’s online Customer and Asset Management System, and cooperating with Berlin and ISO-NE to effect such transfer.

8. ISO-NE and all applicable government authorities are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion. To the extent provided by Bankruptcy Code section 525, no governmental unit (as defined in Bankruptcy Code section 101(27)) may “deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant” to the Debtors, or any individuals or entities associated with the Debtors, based on these Chapter 11 Cases or the any of the relief ordered by this Court. All government recording offices are authorized to accept notices and/or other documents reflecting termination of the Option Agreement.

9. Nothing herein shall relieve, or be construed to have relieved, Eversource of its obligation to attend the multi-day capacity auction that began on February 5, 2024.

10. This Order is effective immediately upon its entry.

11. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

EXHIBIT B

**AMENDED AND RESTATED
POWER PURCHASE AGREEMENT**

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS

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

- 1.1 “Affiliate” of a Person means any other person controlling, controlled by or under common control with such first Person.
- 1.2 “Adjusted Base Price” is defined in Section 6.1.2(a)(ii).
- 1.3 “Adjustment Percentage” means a percentage equal to (i) the number of days in the first Operating Year, divided by (ii) 365.
- 1.4 “Ancillary Services” means any Product other than Energy, Capacity or Renewable Products that is recognized and compensated pursuant to the ISO-NE Documents from time to time.

- 1.5 “Average LMP Price” means the weighted average dollar value of Energy (in MWhs) delivered from the Facility to PSNH over any Operating Year (including all MWhs paid for at the Adjusted Base Price), based solely on the hourly Day-Ahead ISO-NE locational marginal price in effect at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system for each MWh delivered, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current locational marginal price for Energy.
- 1.6 “Base Price” means as defined in Section 6.1.2(a)(i).
- 1.7 “Biomass Fuel” means untreated, plant derived material including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips or pellets, shavings, sawdust and slash, agricultural crops, and any other form of biomass eligible for use to generate a REC in New Hampshire under applicable law from time to time.
- 1.8 “Business Day” means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.
- 1.9 “Capacity” means the MWs of capacity that (i) has obtained a capacity supply obligation as a result of participation and clearing in an ISO-NE administered forward capacity auction, reconfiguration capacity auction or any successor or other capacity supply auction, marketplace, or agreement and, (ii) as such, is receiving compensation pursuant to this capacity supply obligation by ISO-NE via the ISO-NE settlement process governed by the ISO-NE Documents.
- 1.10 “Change in Law” means that any applicable law, rule, or regulation is changed (whether directly or indirectly by pre-emption, displacement or substitution) or any new applicable law, rule, or regulation is enacted or promulgated subsequent to the Effective Date.
- 1.11 “Claim” has the meaning set forth in Section 13.3.
- 1.12 “Code” means Internal Revenue Code of 1954, as amended from time to time.
- 1.13 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties.
- 1.14 “Cumulative Factor” means as defined in Section 6.1.4.
- 1.15 “Cumulative Reduction” means as defined in Section 6.1.4.

- 1.16 “Delivery Point” means the Interconnection Point, as defined in the Interconnection Agreement.
- 1.17 “Effective Date” has the meaning set forth in the preamble.
- 1.18 “Energy” means electric energy, as such term is defined in the ISO-NE Documents, generated by the Facility which is delivered to PSNH at the Delivery Point..
- 1.19 “Environmental Attributes” means any and all generation attributes under any and all international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility during the Term including: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any GIS Certificates issued in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include Tax/Grant Benefits.
- 1.20 “EPT” means Eastern Prevailing Time.
- 1.21 “Facility” means Seller’s plant for generating electricity as described in Appendix A.
- 1.22 “FERC” means the Federal Energy Regulatory Commission.
- 1.23 “Force Majeure” has the meaning set forth in Section 14.1.
- 1.24 “GIS” means the New England Power Pool General Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that identifies generation attributes of MWhs of energy accounted for in such system, and any successor to such system.
- 1.25 “GIS Certificate” means an electronic certificate created pursuant to the Operating Rules of the GIS or any successor thereto to represent the generation attributes of each MWh of Energy generated within the ISO-NE control area and the generation attributes of certain Energy imported into the ISO-NE control area.
- 1.26 “GIS Forward Certificate Transfer System” means the mechanism specified in the operating rules of the GIS system to effect transfers of GIS Certificates in advance of their creation.
- 1.27 “Good Industry Practices” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric generation industry with respect to producing electricity from the Facility. Good Industry Practices shall also include

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

- 1.28 "In-Service Date" means the date on which Seller declares the Facility as in service for purposes of qualification for the Code and the Facility is capable of regular commercial operation with a predictable daily dispatch. Seller shall provide PSNH with notice of the actual In-Service Date within fifteen (15) days of such date.
- 1.29 "Interconnecting Utility" means Public Service Company of New Hampshire (or its successor in interest) in its capacity as a party to the Interconnection Agreement.
- 1.30 "Interconnection Agreement" means the Interconnection Agreement by and between Seller and the Interconnecting Utility and/or the ISO-NE as the same may be amended from time to time.
- 1.31 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law in transactions involving entities having the same characteristics as the Parties.
- 1.32 "Investment Grade Rating" means a Credit Rating of "Baa3" or better from Moody's, "BBB-" or better from S&P or Fitch, or an equivalent Credit Rating by another nationally recognized rating service reasonably acceptable to the Party accepting a guaranty of the obligations of the other Party. If there are split ratings, the lowest of the Credit Ratings will apply.
- 1.33 "ISO New England Inc." or "ISO-NE" means ISO New England Inc., its successor, or any other independent system operator or regional transmission organization for New England.
- 1.34 "ISO-NE Documents" means all tariffs, rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such tariffs, rules and procedures may be amended from time to time, including but not limited to, the ISO-NE Tariff, the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and

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

- 1.35 “ISO-NE Energy Price” means the hourly Day-Ahead ISO-NE locational marginal price at the pricing location designated for the Facility within the ISO-NE settlement and billing systems of the ISO-NE market system, or such successor energy price or other prices in effect from time to time which include all equivalent price components as the current LMP.
- 1.36 “ISO-NE Tariff” means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as may be amended from time, or any successor tariff accepted by FERC.
- 1.37 “kW” means a kilowatt.
- 1.38 “kWh” means a kilowatt hour.
- 1.39 “LMP” means Locational Marginal Price.
- 1.40 “MW” means a megawatt.
- 1.41 “MWh” means a megawatt hour.
- 1.42 “Market Rule 1” means Section III of the ISO-NE Tariff, or any successor agreement accepted or approved by FERC.
- 1.43 “NEPOOL” means the New England Power Pool, the power pool created by and operated pursuant to the provisions of the RNA, or any successor or replacement organization(s).
- 1.44 “NHPUC” means the New Hampshire Public Utilities Commission or its successor.
- 1.45 “NHPUC Order” means Order No. 25, 213, dated April 18, 2011 issued by the NHPUC.
- 1.46 “New England Control Area” means as defined in the ISO Tariff.
- 1.47 “New England Markets” means as defined in Section I of the ISO Tariff.
- 1.48 “NH Class I Renewable Energy Credits” or “NH Class I RECs” means REC produced or, in the event of a Change of Law that would have been produced, by the Facility pursuant to its qualification as a renewable energy source as defined in the NH Class I Renewable Statutes at NH RSA § 362-F, as in effect on the Effective Date, and regardless of any subsequent Change in Law.
- 1.49 “Operating Year” means the twelve (12) consecutive calendar months starting on the first day of the calendar month following the In-Service Date and each subsequent

twelve (12) consecutive calendar month period; provided that the first Operating Year shall also include the days in the prior month on and after the In-Service Date.

- 1.50 “Participants Agreement” means the “Participants Agreement among ISO New England Inc. as the Regional Transmission Organization for New England and the New England Power Pool and the entities that are from time to time parties hereto constituting the Individual Participants” dated as of February 1, 2005, as may be amended from time to time, or any successor thereto accepted by FERC.
- 1.51 “Person” means a natural person, a corporation, partnership, limited liability company, trust or any other organization or entity however organized.
- 1.52 “Pool Transmission Facility” or “PTF” means as defined in Section II of the ISO Tariff.
- 1.53 “Products” means the following items to be produced by the Facility: (i) any electrical product or service that is recognized and compensated pursuant to the ISO-NE Tariff from time to time, including but not limited to Energy, Capacity, Ancillary Services, and (ii) any Renewable Products. Products do not include any Tax/Grant Benefits.
- 1.54 “Project Site” has the meaning set forth in Appendix A.
- 1.55 “Purchase Option Agreement” means the agreement described in Appendix B hereto.
- 1.56 “Qualified Institution” shall mean a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) “A” by S&P and “A2” by Moody’s, if such entity is rated by both S&P and Moody’s or (b) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, and (ii) having a capital surplus of at least Ten Billion Dollars (\$10,000,000,000).
- 1.57 “RNA” means the New England Power Pool Second Restated NEPOOL Agreement dated as of September 1, 1971, as amended and restated from time to time, governing the relationship among the NEPOOL Participants, or any successor agreement.
- 1.58 “Renewable Energy Certificates” and “RECs” means any certificate, either paper, electronic, or any other form (including a NEPOOL GIS Certificate) that can be used to transfer rights to Environmental Attributes produced by the Facility under any Renewable Portfolio Standard.
- 1.59 “Renewable Portfolio Standard” means New Hampshire RSA Chapter 362-F, and any other statute, law, regulation or order promulgated by any legislative and/or regulatory authority pertaining to similar renewable energy source requirements.
- 1.60 “Renewable Products” means RECs and any other Environmental Attributes.
- 1.61 “Renewable Products Payment” means the alternative compliance payment schedule set forth under NH RSA § 362-F for RECs produced by NH Class I Renewables, as

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

- 1.62 “Scheduled Operation Date” means the date set forth in Section 5.2.
- 1.63 “Schiller Station” means as defined in Section 6.1.2(a)(ii).
- 1.64 “Seller Required Approvals” means approvals from (i) the NHPUC to the extent applicable to Seller’s ability to operate within New Hampshire; (ii) approval of the New Hampshire Site Evaluation Committee, together with related New Hampshire agency permits and approvals.
- 1.65 “Site” means the real estate on which the Facility is located.
- 1.66 “Site Owner” means any entity holding fee interest title in or to any portion of the Site and improvements thereon.
- 1.67 “Tax” or “Taxes” means all taxes that are currently or may in the future be assessed on any products or services that are the subject of this Agreement.
- 1.68 “Tax/Grant Benefits” means any production tax credits, investment tax credits, grants in lieu of tax credits, fuel subsidies or other non-tax cash grants or subsidies, credits or benefits that may be available with respect to the Facility pursuant to the Code or other federal or state law, including but not limited to production tax credits pursuant to Section 45 of the Code, and investment tax credits or grants available under Section 48 of the Code; provided, however, that any marketable, recurring attribute resulting from Facility production that is not listed above shall not be deemed a Tax/Grant Benefit. For the avoidance of confusion, any marketable Environmental Attribute, known today or created in the future, resulting from production of the Facility (as opposed to any tax benefit or a one-time credit or grant) is not and shall not be considered to be a Tax/Grant Benefit but instead is a Product.
- 1.69 “Term” means the period set forth in Section 2.1.
- 1.70 “Wood Price Adjustment” and “WPA” are defined in Section 6.1.2(a)(ii).

ARTICLE 2. TERM OF AGREEMENT

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

- 2.2 **In-Service Date.** Seller shall provide to PSNH, subject to PSNH approval, a plan for testing and startup of the Facility at least thirty (30) days prior to the dates upon which Seller tests the Facility in order to establish the In-Service Date. PSNH shall have the right to be present at the Site during start-up and testing (subject to all safety procedures in effect at the Site), and/or to receive documentary evidence of the Facility's operation.
- 2.3 Following the end of the Term or otherwise upon termination of this Agreement, the Parties hereto shall have no further obligations hereunder, except as otherwise expressly provided herein or to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before the end of the Term and except as provided below in Section 2.4 and in Article 7, Right of First Refusal and Purchase Option.
- 2.4 If ownership and/or operating control of the Facility is transferred to a third party, then Seller shall include or cause to be included as part of the transfer and sale agreement with the third party the obligation that the new owner and/or the new operator shall assume all of the rights and obligations of Seller set forth in this Agreement.

ARTICLE 3. FACILITY

- 3.1 **Description.** The Facility is as described in Exhibit A, Description of Facility.
- 3.2 **Primary Energy Source.** Seller shall ensure that the Facility shall use Biomass Fuel as its primary energy source.
- 3.3 **Qualifying Facility.** Facility shall acquire its status as a "qualifying facility" pursuant to 18 C.F.R. Part 292 prior to the In-Service Date and maintain such status throughout the Term.

ARTICLE 4. PREREQUISITES FOR PURCHASES

- 4.1 PSNH's obligation to begin the purchase of Products is contingent upon the satisfaction of all the following conditions:
- 4.1.1 Execution of an Interconnection Agreement by the applicable parties and, if required, FERC acceptance and approval of the Interconnection Agreement under Section 205 of the Federal Power Act;
- 4.1.2 PSNH has received evidence to its reasonable satisfaction that Seller has obtained all permits, licenses, approvals and other governmental authorizations needed to commence commercial generation of Products, including certification to produce NH Class I RECs;
- 4.1.3 PSNH has received from the NHPUC a final, nonappealable decision acceptable to PSNH in its sole discretion, approving and allowing for full cost recovery of the rates, terms and conditions of this Agreement;

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

ARTICLE 5. PURCHASE AND SALE OF POWER

- 5.1 Subject to the terms and conditions of this Agreement, Seller shall sell and deliver and PSNH shall purchase and accept delivery of one hundred percent (100%) of the Products produced by the Facility.
- 5.2 The original "Scheduled Operation Date" of the Facility is June 1, 2014. Seller agrees to give notice to PSNH at the end of each calendar quarter of any change in this date and of progress in obtaining permits and constructing the Facility.
- 5.3 Seller shall deliver the Energy to PSNH at the Delivery Point.
- 5.4 Prior to the In-Service Date and satisfaction of the Prerequisites for Purchases listed in Article 4, but subsequent to the execution of an Interconnection Agreement, Seller shall sell and PSNH shall purchase one hundred percent (100%) of the Products generated during this period, including Products generated pursuant to such Facility testing, at the prices set forth in Section 6.1.1.
- 5.5 Following the In-Service Date and subject to the satisfaction of the Prerequisites for Purchases listed in Article 4, throughout the Term, Seller shall deliver to PSNH one hundred percent (100%) of the Products and PSNH shall purchase the Products at the prices set forth in Section 6.1.2.

ARTICLE 6. PRICING

- 6.1 The price to be paid by PSNH to Seller for the Products shall be as follows:
- 6.1.1 For Products purchased pursuant to Section 5.4:
- (a) All Products except Capacity and NH Class I RECs: PSNH shall pay to Seller the product of the ISO-NE Energy Price and the hourly quantity (MWh) of delivered Energy for its receipt of all Products (including other Renewable Products) except Capacity and NH Class I RECs;
 - (b) Capacity: PSNH shall pay to Seller any capacity revenues assigned to the Facility and paid to PSNH by ISO-NE or other compensation realized by PSNH for Capacity from the Facility; and

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

6.1.2 For Products purchased pursuant to Section 5.5:

- (a) Subject to Section 6.1.4(c) below, all Products except Capacity and NH Class I RECs will be compensated for by multiplying the Adjusted Base Price in \$/MWh by the hourly quantity (MWh) of delivered Energy:
 - (i) The base Energy purchase price (the “Base Price”) shall be equal to \$69.80/MWh.
 - (ii) Beginning with the start of the first full calendar quarter following the In-Service Date, and thereafter on the start of each calendar quarter, the Base Price will be adjusted up or down by the “Wood Price Adjustment” or “WPA”. The WPA will reflect the difference between the actual average \$/ton Biomass Fuel cost that PSNH paid for Biomass Fuel at its Schiller station facility (“Schiller Station”) during the immediately preceding calendar quarter compared to \$30/ton. This difference (whether positive or negative) in \$/ton will be multiplied by a factor of 1.6 tons/MWh and added to the Base Price. If PSNH (i) materially changes the quality composition of its Biomass Fuel from that utilized by the Schiller Station in calendar year 2008 (by, for example, utilizing lower grade biomass, construction/demolition wastes or co-firing with fossil fuels), or (ii) effectively realizes a material discount or subsidy on its fuel purchases (whether directly or through reduced fuel prices reflecting upstream subsidies) and such discount or subsidy does not provide for similar savings to the Facility’s cost of fuel, or (iii) PSNH ceases burning Biomass Fuel at Schiller Station or Schiller Station is not operational, then, for those periods during which either condition (i), (ii) or (iii) is in effect, the WPA shall be based on the difference between the actual average \$/ ton cost of Biomass Fuel at the Facility and \$30/ton, subject to PSNH’s audit and independent review of the reasonableness of such actual costs. Thus, as of the start of each calendar quarter, such adjustment (the “Adjusted Base Price”) shall be computed as follows:

$$\text{Wood Price Adjustment (WPA)} = 1.6 \times [\text{actual average } \$/\text{ton} \text{ minus } \$30/\text{ton}]$$

$$\text{Adjusted Base Price } (\$/\text{MWh}) = \text{Base Price} + \text{WPA}$$

- (b) Capacity: PSNH shall pay for Capacity from the Facility as follows:
- (i) For the first two (2) Operating Years: \$2.95 per kW-month of Capacity.
 - (ii) For the next three (3) Operating Years: \$4.25 per kW-month of Capacity.
 - (iii) For each subsequent Operating Year, the Capacity Price shall be increased by \$0.15 per kW-month.
 - (iv) Notwithstanding (i) and (ii) above, any payments for Capacity prior to June 2014 shall be in accordance with the provisions of Section 6.1.1(b).

(c) NH Class I RECs:

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

- (i) For NH Class I RECs that are generated pursuant to Facility operation during the first two (2) Operating Years of the Term, PSNH shall pay the product of (i) fifty percent (50%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.
- (ii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years three (3) through seven (7) of the Term, PSNH shall pay the product of (i) eighty percent (80%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.
- (iii) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years eight (8) through twelve (12) of the Term, PSNH shall pay the product of (i) 75% of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was generated and (ii) the quantity of NH Class I RECs delivered during that period.
- (iv) For NH Class I RECs that are generated pursuant to Facility operation during Operating Years thirteen (13) through seventeen (17) of the Term, PSNH shall pay the product of (i) seventy percent (70%) of the Renewable Products Payment that is applicable to the period during which the NH Class I REC was

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

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

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

6.1.4 Cumulative Factor.

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

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

- (b) Following each Operating Year, the value of any Excess MWh Adjustment, as defined in Section 6.1.3, whether positive or negative, will be used to adjust the Cumulative Factor determined pursuant to section 6.1.4(a), to ensure that the Cumulative Factor reflects only those Energy purchases made at this Agreement's Adjusted Base Price (effectively, after the Excess MWh Adjustment).
- (c) Notwithstanding Section 6.1.2 above, if at the end of any Operating Year other than the last Operating Year during the Term, there exists a Cumulative Reduction in excess of One Hundred Million Dollars (\$100,000,000), such excess ("Excess Cumulative Reduction") will be credited against amounts otherwise due for Energy delivered to PSNH during the subsequent Operating Year until such Excess Cumulative Reduction is eliminated. To effect such credit, in each month during the subsequent Operating Year, one twelfth (1/12th) of the Excess Cumulative Reduction ("Monthly Energy Credit") shall be deducted by PSNH from the Seller's invoice, up to the full amount of the payment due to Seller pursuant to Section 6.1.2(a), and any excess over that amount shall carry forward to the following month to the Monthly Energy Credit. If, at the end of the Operating Year subsequent to the year during which there was an Excess Cumulative Reduction, any such amount remains, it shall be deducted by PSNH from the Seller's invoice in the next Operating Year in the same manner described above. If upon expiration of the Term PSNH does not purchase the Facility, Seller shall reimburse PSNH the value of any Excess Cumulative Reduction.

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

ARTICLE 7. RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

7.1 Right of First Refusal.

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

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

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

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

7.2 Purchase Option Agreement.

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

ARTICLE 8. ADMINISTRATIVE COSTS; CHANGE IN REGULATION/LAW

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

and/or the federal government from time to time. Seller also agrees, promptly following receipt by Seller of a written request from PSNH, to make commercially reasonable efforts to apply to other programs for the purpose of increasing the value of the Products to PSNH, in whole or in part, pursuant to the terms of this Agreement; *provided*, that such obligation does not require Seller to pursue or remain involved in litigation, assume new capital or operational obligations, amend or terminate other Product sales arrangements for NH Class I RECs, or otherwise do more than make and pursue such qualification applications; *provided further*, that if a Change in Law (as hereinafter defined) occurs that would require Seller to make a capital expenditure, to incur any expense, to incur any liability, or to increase operating costs for the Facility in order to continue to produce Renewable Products or for Seller to transfer the Renewable Products to PSNH, at PSNH's sole option so long as PSNH, in a manner reasonably acceptable to Seller, agrees to compensate Seller for all such capital expenditures, costs, losses and expenses and agrees to bear such liabilities, Seller shall (a) take such actions, as reasonably requested by PSNH, and (b) execute such documents as necessary to convey to PSNH the Renewable Products, in a form reasonably acceptable to Seller. If a Change in Law occurs where Seller realizes the monetary value of any Renewable Products obligated to be delivered to PSNH hereunder, and Seller is unable to transfer such Renewable Products to PSNH notwithstanding PSNH's request to transfer such Renewable Products to PSNH and PSNH's willingness to bear any liabilities incurred by Seller or compensate Seller for any expenses, losses or costs as provided above, Seller shall, within thirty (30) days of actual receipt, pay to PSNH the amount that Seller actually receives (net of any costs, taxes or expenses Seller incurs to receive such amounts) as a result of its ownership of the Renewable Products within a reasonable time after such amounts are paid to Seller. Subject to the reimbursement obligations of PSNH with respect to such efforts, Seller shall use commercially reasonable efforts to realize any such monetary value.

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

- 9.1 Seller shall construct, operate and maintain the Facility using Good Industry Practices.
- 9.2 Seller shall construct, operate and maintain the Facility so that it obtains and retains its eligibility to produce NH Class I RECs, subject to the provisions of Section 8.1.
- 9.3 PSNH and Seller will be jointly responsible for administrative actions required to obtain the recognition of Capacity for the Facility within the ISO-NE market. Seller shall not be required to participate in any FCM auction process, nor will Seller be compensated for any Capacity until such Capacity is recognized by ISO-NE per Section 1.9. For the avoidance of doubt, neither Party will hold the other Party liable for any damages related to the degree to which the Facility's capability is recognized as Capacity by ISO-NE. PSNH will have no obligation to make any Capacity payments to Seller unless and until the Facility's capability satisfies the definition of Capacity in Section 1.9.

- 9.4 Every day (including weekends and holidays) by 9:00 a.m. EPT, Seller must provide to PSNH an estimated hourly schedule of deliverables for the following day, *except that* Seller may provide such schedule for weekends and holidays on the preceding Business Day.
- 9.5 Prior to October 1 of each year, Seller shall submit to PSNH for review and comment by PSNH an initial schedule of expected electricity delivery levels for the twelve (12) month period beginning with January of the following year. The schedule shall state the estimated times of operation, amounts of electricity production, number of anticipated shutdowns and reductions of output and the reasons therefore, and the dates and durations of scheduled maintenance, including a specification of maintenance requiring shutdown or reduction in output of the Facility. Subject to the requirements of Good Industry Practices, Seller shall not schedule routine maintenance of the Facility during the months of January, February, June, July or August, and shall consult with PSNH at least thirty (30) days prior to removing the Facility from service for routine maintenance. Seller is required at all times to comply with any outage scheduling procedures or requirements of ISO-NE or successor organization. Seller shall:
 - 9.5.1 Consider requests by PSNH for revisions to the schedule within sixty (60) days from PSNH's receipt of the initial schedule, and subsequently advise PSNH of any changes in plan for conducting maintenance that would require an outage expected to be of greater than one (1) week's duration; and
 - 9.5.2 Make all reasonable efforts, consistent with Good Industry Practices, to accommodate any additional changes in the initial schedule requested by PSNH; *provided, however*, that any such changes shall not be expected to reduce the total expected deliveries from the Facility.
- 9.6 Seller shall provide to any relevant person any information that may be required about the Facility's operations from time to time by NEPOOL or ISO-NE.
- 9.7 For the purpose of any bidding and administrative actions associated with NEPOOL or ISO-NE, PSNH shall be considered the Lead Participant as such term is defined by those organizations. The Parties will cooperate and work in good faith to establish mutually acceptable bidding procedures.
- 9.8 If the Facility is required to curtail deliveries of any Products pursuant to the Interconnection Agreement or ISO-NE notifications, Seller shall be entitled to effect such curtailment and PSNH shall have no obligation to pay for any Products that would have been delivered by Seller during such periods for which Seller has curtailed deliveries. PSNH shall have no obligation to accept or pay for any Products associated with energy deliveries in excess of the level to which Seller curtailed its deliveries during such periods, but PSNH shall pay Seller for any Products delivered up to the level to which Seller curtailed during such periods.
- 9.9 Subject only to Good Industry Practices, during any period in which ISO-NE or NEPOOL notifies or causes Seller to be notified that the Facility should operate in a

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

ARTICLE 10. BILLING AND PAYMENT

- 10.1 PSNH or Interconnecting Utility, as applicable, shall be the designated meter reader by ISO-NE and read Seller's meters.
- 10.2 Not later than five (5) Business Days following the end of each calendar month, PSNH shall read the Seller's meters installed as described in the Interconnection Agreement, calculate a monthly invoice for the applicable Products, and provide this information to Seller within ten (10) days of such reading. Seller shall then return to PSNH the approved invoice for payment and PSNH shall make payments to Seller electronically in immediately available funds for the total amount due within twenty-three (23) days of the meter reading date or ten (10) days of Seller's return to PSNH of the approved invoice, whichever is later; *provided, however*, that payments for NH Class I RECs will occur upon delivery into the PSNH NEPOOL GIS account, or upon other mutually agreeable conditions that certify that any and all NH Class I RECs have been delivered to PSNH. To the extent that PSNH is not satisfied that delivery of any Products has occurred, including but not limited to the satisfactory delivery of Renewable Products, PSNH shall reduce payments in an amount equal to the value of the non-delivered Products.
- 10.3 The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing under this Agreement and the Interconnection Agreement to each other on the same date, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement and/or the Interconnection Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts, interest, and payments or credits, that Party shall pay such sum in full when due, subject to the provisions

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

- 10.4 Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Interest Rate.
- 10.5 If either Party disputes the amount of any bill, it shall so notify the other Party in writing. Each Party receiving a bill shall pay to the other Party any undisputed amount of the bill or charges when due. The disputed amount may, at the discretion of the paying Party, be held by that Party until the dispute has been resolved; provided that the paying Party shall be responsible to pay interest at the Interest Rate on any withheld amounts that are determined to have been properly billed. The disputed amount may be held by the paying Party provided that the paying Party or its guarantor, if applicable, has an Investment Grade Rating, or by a Qualified Institution if the paying Party or its guarantor, if applicable, does not have such a rating. Neither Party shall have the right to challenge any monthly bill or to bring any court or administrative action of any kind questioning the propriety of any bill after a period of twenty-four (24) months from the date the bill was delivered to the Party required to make payment thereunder; provided, however, that in the case of a bill based on estimates, such twenty-four month period shall run from the due date of the final adjusted bill.

ARTICLE 11. INTERCONNECTION AND DELIVERY

- 11.1 This Agreement does not provide for any electric service by PSNH to Seller. If Seller requires any electric services from PSNH and is legally entitled to such service from PSNH, Seller shall receive such service in accordance with PSNH's applicable electric tariffs or, if no currently existing tariff is applicable, by special contract subject to the approval of the NHPUC.
- 11.2 Seller shall be responsible for any and all costs, charges and expenses associated with the Facility in connection with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees.
- 11.3 In addition to the provisions of Section 6.1.3 and Section 12.2.1, for any period during which PSNH does not fulfill its purchase obligations hereunder for any reason, Seller may freely sell (subject to all applicable laws and regulations) any or all of the Facility's Products produced during such period to one or more third parties until such time as PSNH resumes purchases hereunder.

ARTICLE 12. EVENTS OF DEFAULT; REMEDIES

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

- 12.1.1 such Party fails to pay an amount due by the due date, and such failure is not remedied within seven (7) Business Days after notice by the other Party; *provided, however*, is such Party fails to remedy payment and such failure is caused not (even in part) by the unavailability of funds but is caused solely by a technical or administrative error, then such Party shall have an additional three (3) Business Days to pay the amount due after notice of failure to remedy by the other Party.
- 12.1.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and the effect of such misrepresentation is not remedied within thirty (30) days after notice by the other Party; provided that, if any such representation or warranty cannot be made true or cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the Non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;
- 12.1.3 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) Business Days after notice by the other Party; provided that, if any such default cannot be cured by the Defaulting Party within such 30-day period with exercise of reasonable due diligence, and if the Defaulting Party within such period submits for the Non-Defaulting Party's approval a plan reasonably designed to correct the default within a reasonable additional period of time, then, unless the non-Defaulting Party reasonably refuses to approve such plan, an Event of Default shall not exist unless and until the Defaulting Party fails to diligently pursue such cure or fails to cure such default within the additional period of time specified by the plan; provided further that, if the Non-Defaulting Party reasonably refuses to approve such plan, the Defaulting Party shall have at least, but no more than, one hundred eighty (180) days after the date of initial notice from the Non-Defaulting Party to cure the default;
- 12.1.4 such Party becomes or is made subject to a reorganization or liquidation proceeding administered pursuant to the U.S. Bankruptcy Code, whether pursuant to a voluntary or involuntary petition; or
- 12.1.5 such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving

or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

12.2 Rights of Non-Defaulting Party

12.2.1 If an Event of Default as set forth in this Article 12 with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to notify the Defaulting Party and (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective as an early termination date of this Agreement, and/or (ii) withhold any payments due to the Defaulting Party under this Agreement, and/or (iii) suspend performance.

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

12.3 Other Termination Rights

12.3.1 **Seller’s Right to Terminate.** This Agreement may be terminated by Seller at any time prior to the In-Service Date in the event that Seller decides to cancel the Project because Seller is unable to procure and have delivered to the Project Site all of the equipment and materials required to construct and operate the Facility at a total installed cost consistent with Seller’s budgeted costs on an economically feasible basis with a return on its total investment in the Facility satisfactory to Seller in Seller’s sole discretion; *provided, however*, that in such event, Seller shall notify PSNH that Seller is irrevocably terminating Facility development and/or construction, whereupon this Agreement shall terminate without further obligation of either Party except with respect to any PSNH purchase option or right set forth in Article 7; *provided further, however*, that if Seller or an Affiliate of or successor to Seller recommences development and/or construction of the Facility within a twelve-month period from the date of such notice to PSNH, then this Agreement may be reinstated at PSNH’s sole option and shall be in full force and effect upon such reinstatement.

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

Sections 4.1.3 or 4.1.4 above and beyond the date that is the 180th day following the date of the Original PPA (i.e., June 8, 2010), but in no event shall any such extension be beyond December 31, 2015, or (iii) Seller fails after the In-Service Date to deliver any Products to the Delivery Point that are required to be delivered hereunder for a period of twelve (12) consecutive months; *provided* that in each case PSNH shall give Seller notice of such termination within ten (10) Business Days after such date; and *further provided* that the twelve (12) month period referred to in subsection (iii) shall be extended for any period that Seller was unable to deliver Products to PSNH in whole or in part as a result of the occurrence of a Force Majeure event; and *further provided* that any PSNH purchase option or right set forth in Article 7 shall survive such termination.

12.4 Termination Liability

- 12.4.1 If, prior to the In-Service Date, PSNH terminates this Agreement pursuant to Section 12.3.2 or Seller terminates this Agreement pursuant to Section 12.3.1, then neither Party shall have any liability to the other Party pursuant to this Agreement and the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination and shall not incur any additional liability to each other as a result of such termination; provided that such termination shall not discharge or relieve either Party from any obligation that has accrued prior to such termination or from its obligations under certain other provisions of this Agreement as provided in Section 26.5.
- 12.4.2 Further, if Seller terminates this Agreement pursuant to Section 12.3.1 before the In-Service Date or if PSNH terminates this Agreement pursuant to Section 12.3.2 then, for a period of two (2) years following delivery of notice by Seller to PSNH of the termination of this Agreement neither Seller, its Affiliates, successors nor assigns shall: (i) seek to sell, or to sell, any electricity from an electric generating facility on the Project Site to a third person without PSNH's consent; or (ii) be entitled to enter into a long term power sales agreement for the sale of any Products and/or Renewable Energy Certificates from an electric generating facility on the Project Site with any entity other than PSNH; provided, that the foregoing restrictions shall terminate if Seller has offered in writing to PSNH during such period to reinstate this Agreement or enter into a new agreement on the same terms and conditions as this Agreement and PSNH has not agreed in writing to reinstate this Agreement or enter into such a new agreement within ninety (90) days following the receipt by PSNH of such offer.
- 12.4.3 If, following the In-Service Date, either Party terminates this Agreement pursuant to Section 12.2, both Parties shall be discharged from all further obligation under the terms of this Agreement, except (i) any liability which may have been incurred before the date of such termination and any liability on account of such termination, including without limitation the obligation to pay for Products delivered prior to any such termination and/or for all direct

damages incurred by the Non-Defaulting Party on account of any termination for default, which obligations shall survive the termination of this Agreement (ii) any PSNH purchase option set forth in Article 7, Right of First Refusal and Purchase Option, and (iii) any liability which survives termination of this Agreement.

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

- 13.1 **Title and Risk of Loss.** Title to and risk of loss related to the Products delivered hereunder shall transfer from Seller to PSNH at the Delivery Point. Seller warrants that it will deliver to PSNH the Products free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.
- 13.2 **Taxes.** With the exception of any sales or gross receipts Taxes that are required by applicable law to be paid by PSNH, Seller shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the sale of the Products prior to the Delivery Point. PSNH shall pay or cause to be paid all present and future Taxes, fees and levies on or with respect to the purchase of the Products at, from and after the Delivery Point, other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with the intent of the Parties to minimize the imposition of Taxes, fees and levies.
- 13.3 **Indemnification.** On and after the Effective Date, Seller and PSNH shall each, to the extent permitted by law, indemnify, defend and hold the other, its members, officers, employees and agents (including but not limited to affiliates and contractors and their employees), harmless from and against all liabilities, damages, losses, penalties, claims, demands, suits and proceedings of any nature whatsoever for personal injury (including death) or property damage or otherwise asserted by a third party (a "Claim") that arises from or out of any event or circumstance first occurring or existing during the period when control and title to the Products is vested in such Party or which is in any manner connected with the performance of this Agreement by such Party, except to the extent that such Claim may be attributable to the gross negligence or willful misconduct of the Party seeking to be indemnified.
- 13.4 Either Party may be involved in an action and intend to seek indemnity under this Article 13 from the other Party. If so, the Party seeking indemnity must give prompt notice of the pendency of the action to the other Party. Whether or not notice is given, any Party from whom indemnity might be sought may, but need not, participate in the action for which the indemnity is requested with separate counsel and may assert all defenses available to it.

ARTICLE 14. FORCE MAJEURE

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

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

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

- (a) The non-performing Party promptly, but in no case later than five (5) Business Days after the occurrence of the Force Majeure, gives the other Party notice describing the particulars of the occurrence describing, in detail, the nature, extent and expected duration of the Force Majeure;
- (b) The suspension of performance shall be of no greater scope, and of no longer duration, than is reasonably required by the Force Majeure; and
- (c) The non-performing Party uses commercially reasonable efforts to remedy its inability to perform.

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

ARTICLE 15. LIMITATION OF LIABILITIES

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

ARTICLE 16. REPRESENTATIONS AND WARRANTIES

16.1 Seller hereby represents and warrants to PSNH as follows:

- 16.1.1 Seller has full power and authority to execute and deliver this Agreement, and Seller shall continue to have full power and authority to perform its obligations hereunder, and to consummate the transactions contemplated hereby during the Term of this Agreement. The execution and delivery of this Agreement by Seller and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action required on its part and this Agreement has been duly and validly executed and delivered by Seller. For the Term of this Agreement, Seller agrees that this Agreement shall constitute Seller's legal, valid and binding agreement, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).
- 16.1.2 Neither the execution and delivery of this Agreement by Seller nor the consummation by Seller of the transactions contemplated hereby during the Term of this Agreement will (i) conflict with or result in any breach or violation of any provision of the enabling legislation, bylaws, certificate of formation, LLC agreement, and any other applicable governing or formation documents of Seller, (ii) result in a default (or give rise to any right of termination, consent, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or (iii) constitute violations of any law, regulation, order, judgment or decree applicable to Seller.
- 16.1.3 Except for the Seller Required Approvals, which Approvals Seller agrees to obtain in order to satisfy the Prerequisites for Purchases set forth in Article 4, no consent or approval of, filing with, or notice to, any governmental authority by or for Seller is necessary for the execution and delivery of this Agreement by it, or the consummation by it of the transactions contemplated hereby.
- 16.1.4 Seller agrees that during the Term of this Agreement, Seller shall comply with any and all filing and notice requirements, conditions or orders made part of, included with or subsequently added to Seller Required Approvals. Seller further agrees, during the Term of this Agreement, to fully comply with its organizational and governing documents and determinations of any governmental instrumentality applicable to Seller.

16.2 PSNH hereby represents and warrants to Seller as follows:

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

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

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

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

ARTICLE 17. ASSIGNMENT

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

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

- 17.2 Notwithstanding Section 17.1, PSNH shall have the right to assign, without the consent of Seller and without recourse to PSNH, all or any part of PSNH's interest and obligations hereunder to any regulated affiliated New Hampshire electricity distribution company of equivalent or better creditworthiness.
- 17.3 Notwithstanding Section 17.1, Seller shall have the right to assign, without the consent of PSNH, its rights and interests hereunder, including any right to receive payments under this Agreement, to any bank, insurance company, capital fund or similar financial institution or entity providing financing to Seller (including a sale/leaseback financing), *provided that* no such assignment shall relieve Seller of responsibility or liability for the due performance of this Agreement. PSNH agrees, upon receipt of a written request from Seller, to execute a commercially reasonable consent to any such collateral assignment by Seller providing for, among other things, simultaneous notices to Facility capital providers, a right (but not obligation) of such capital providers to cure any Seller default hereunder, and the directing of payments due Seller hereunder directly to such capital providers.
- 17.4 Any purported assignment not in compliance with this Article 17 shall be null and void.
- 17.5 **Assignment.** PSNH hereby consents to the assignment by LBB of all right, title and interest of LBB in and to the Original PPA to Seller. PSNH and Seller hereby amend and restate the Original PPA, the terms of which are superseded in their entirety by the terms of this Agreement.

ARTICLE 18. TRANSFER OF OWNERSHIP

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

ARTICLE 19. AUDIT RIGHTS

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

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

ARTICLE 20. GOVERNMENT ACTIONS

- 20.1 Seller and PSNH shall at all times comply with all valid and applicable federal, state and local laws, rules, regulations and orders in connection with the performance of their respective obligations under this Agreement.
- 20.2 Seller shall use commercially reasonable efforts to obtain and retain any permits, licenses, approvals or other governmental authorizations required for the construction and operation of the Facility and Seller's performance pursuant to this Agreement for the Term. PSNH shall cooperate with Seller to obtain and retain such permits, licenses, approvals and authorizations to the extent reasonably requested by Seller, but only to the extent that PSNH does not incur any unreasonable costs in connection with that cooperation.

ARTICLE 21. NOTICES

- 21.1 All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, except as otherwise provided or as reasonable under the circumstances. Service of a notice may be accomplished and will be deemed to have been received by the recipient Party on the day of delivery if delivered by personal service, on the day of confirmed receipt if delivered by telegram, registered or certified commercial overnight courier, or registered or certified mail or on the day of transmission if sent by telecopy or email with evidence of receipt obtained, to each Party at the following addresses:

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

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

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

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

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

ARTICLE 22. GOVERNING LAW; VENUE

- 22.1 **Governing Law.** Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, (i) the laws of the State of New Hampshire other than any conflicts of law provision, the effect of which would be to apply the substantive law of a state other than the State of New Hampshire to the governance and construction of this Agreement; (ii) Part II of the Federal Power Act, 16 U.S.C. §§824d *et seq.*; (iii) Part 35 of Title 18 of the Code of Federal Regulations, 18 C.F.R. §§ 35 *et seq.*; and (iv) present and future laws and present and future regulations or orders properly issued by local, state, or federal bodies having jurisdiction over the matters set forth herein.
- 22.2 **Venue.** Subject to Article 25, Dispute Resolution, any dispute arising out of this Agreement shall be brought in a court of competent jurisdiction located in Manchester in the State of New Hampshire. Each Party irrevocably waives any objection which it may have to the venue of any proceeding brought in any such court and waives any claim that such proceedings have been brought in an inconvenient forum.

ARTICLE 23. CHANGE IN LAW

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

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

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

- 24.1 It is the intention of the Parties that neither Seller nor PSNH shall have the unilateral right to make a filing with FERC under any section of the Federal Power Act, or with the NHPUC, seeking to change the charges or any other terms or conditions set forth in this Agreement for any reason. The preceding sentence shall not prevent (i) either Party from participating in or initiating any proceeding at FERC concerning a change to the ISO-NE Documents that impact this Agreement or (ii) PSNH from seeking NHPUC review and/or approval of any material discretionary actions to be taken by PSNH in performing under this Agreement, such as PSNH's exercise or transfer of the Purchase Option Agreement, transfer of the Cumulative Reduction, transfer of the Right of First Refusal, or incurrence of expenditures under Article 8 hereof.
- 24.2 It is the intention of the Parties that any authority of FERC or the NHPUC to change this Agreement shall be strictly limited to that authority which applies when the Parties have irrevocably waived their right to seek to have FERC or the NHPUC change any term of this Agreement.
- 24.3 FERC Standard of Review; Certain Covenants and Waivers.
- 24.3.1 Absent the agreement of all Parties to a proposed change, the standard of review for changes to any section of this Agreement specifying the pricing or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S.Ct. 2733 (June 26, 2008) (the "*Mobile-Sierra*" doctrine).
- 24.3.2 The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.
- 24.3.3 Notwithstanding the foregoing Sections 24.3.1 and 24.3.2, to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns,

hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC, or to support another in obtaining, by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, or support another in obtaining, an order from FERC changing any section of this Agreement specifying the pricing, charges, classifications or other economic terms and conditions agreed to by the Parties. It is the express intent of the Parties that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, shall prevail, notwithstanding any changes in applicable law or markets that may occur. In the event it were to be finally determined that applicable law precludes one or both Parties from waiving its rights to seek changes from FERC to its market-based power sales contracts (including entering into covenants not to do so) then this Section 24.3.3 shall not apply, *provided that*, consistent with Section 24.3.1, neither Party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in Section 24.3.1.

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

ARTICLE 25. DISPUTE RESOLUTION

- 25.1 **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive (“Initial Notice”). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as

compromise and settlement negotiations for purposes of applicable rules of evidence.

- 25.2 Mediation. If the dispute has not been resolved by negotiation within twenty (20) Business Days of the disputing Party's Initial Notice, or if the Parties failed to meet within five (5) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.
- 25.3 Arbitration. Except in cases where the dispute is subject to NHPUC and/or FERC jurisdiction, any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth in Sections 25.1 and 25.2 within thirty (30) Business Days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however*, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.
- 25.4 The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.
- 25.5 **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

ARTICLE 26. MISCELLANEOUS

- 26.1 **Confidentiality.** The terms of this Agreement, and any other information exchanged by PSNH and Seller relating to this Agreement, shall not be disclosed to any person not employed or retained by the PSNH or Seller or their Affiliates, except to the extent disclosure is (1) required by law, required to be made to any governmental authority for obtaining any approval, permits and licenses, or making any filing in connection therewith, required by the Interconnection Agreement or delivered by Seller to ISO-NE or to any Person exercising authority over Seller or the Facility for the purpose of maintaining the safety or reliability of the electric system into which the Energy output is delivered, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, or any financing related to the Facility, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency) or pursuant to the rules or regulations of any stock exchange to which a Party or any of its Affiliates are bound. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision). The Parties specifically agree that any press release or other public statement that addresses specific commercial terms of this Agreement shall be mutually agreed upon and the text thereof approved by the Parties.
- 26.2 **Project Financial Information.** Seller agrees to provide project financial information related to the Facility as reasonably requested from time to time by PSNH in order to meet PSNH's FASB, SEC and FERC accounting and reporting requirements.
- 26.3 **Severability.** The provisions of this Agreement are severable. To the extent that any provision hereof is determined to be invalid pursuant to any applicable statute or rule of law, such invalidity shall not affect any other provision hereof, and this Agreement shall be interpreted as if such invalid provision were not a part hereof.
- 26.4 **Waiver.** No waiver by either Party of the performance of any obligation under this Agreement or with respect to any default or any other matter arising in connection with this Agreement shall be deemed a waiver with respect to any subsequent performance, default or matter.
- 26.5 **Survivability.** This Agreement shall survive termination, expiration, cancellation, suspension, or completion of the agreements set forth herein to the extent necessary to allow for final accounting, final billing, billing adjustments, resolution of any billing dispute, resolution of any court or administrative proceeding and final

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

- 26.6 **No Duty to Third Parties.** Nothing in this Agreement nor any action taken hereunder is intended to or shall be construed to create any duty, liability or standard of care to or from any person not a Party to this Agreement. However, lenders to the Seller or to the Facility may have the option to perform certain Seller obligations as defined more fully under the terms of the financing documents related to the Facility.
- 26.7 **Amendment.** No amendment of all or any part of this Agreement shall be valid unless it is reduced to writing and signed by both Parties and, in the case of a material amendment, approved by the NHPUC.
- 26.8 **Complete and Full Agreement.** This Agreement sets forth the entire agreement of the Parties with respect to the subject matter herein, and takes precedence over all prior understandings between the Parties, and binds and inures to the benefit of the Parties, their successors and assigns.
- 26.9 **Counterparts.** Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original.

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

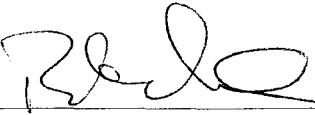
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____
Name: Gary A. Long
Title: President and Chief Operating Officer

BERLIN STATION, LLC

By: Robert Desrosiers
Name: ROBERT DESROSIER
Title: VP of its Manager Core Street Capital Inc.

LAIDLAW BERLIN BIOPower, LLC

By: _____

Name: Robert Desrosiers

Title: Manager

APPENDIX A

DESCRIPTION OF FACILITY

The Facility will be located at the former Fraser Paper Mill located at Commercial Street in Berlin, NH (the “Project Site”). The Facility is expected to utilize Biomass Fuel as its primary fuel. The Facility will be designed and operated as a NH Class I renewable energy source.

APPENDIX B

FORM OF PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT (this "Option Agreement") is made as of _____, 20__ (the "Effective Date") by and between **Public Service Company of New Hampshire**, a New Hampshire corporation ("PSNH"), **Berlin Station, LLC**, a Delaware limited liability company ("Site Owner" or "Berlin Station"), and **Burgess Biopower, LLC**, a Delaware limited liability company ("Burgess"). PSNH, Site Owner and Burgess (together with their respective successors and assigns) are the "Parties" and each individually is a "Party" to this Option Agreement.

RECITALS:

A. Site Owner is developing a biomass fueled electric generating facility having a gross generating capacity output of approximately 70 megawatts (the "Facility") located on an approximately sixty-two (62) acre site in Berlin, New Hampshire, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Facility Site"). For purposes of this Option Agreement, the Facility Site includes all land described in Exhibit "A" and all easements, rights and other real estate interests appurtenant thereto, whether now owned or hereafter acquired by Site Owner, for the use or benefit of the Facility Site and the Facility, and the Facility includes all equipment, generators, boilers, transformers, switching equipment, transmission lines, and other fixtures, trade fixtures, together with articles of personal property necessary to or convenient for the operation of the Facility.

B. Site Owner is the sole owner in fee simple of the Facility Site and the Facility under the deed or deeds recorded in the Coos County Registry of Deeds at Book 1265, Page 1025. The Facility Site is a separate tax and zoning lot (or lots) on the zoning and tax assessment records of the City of Berlin, designated as Tax Map: 129, Parcel: 54.01, 54.001.

C. Burgess is the lessee of the Facility Site and the Facility.

D. Burgess and Site Owner anticipate that subsequent to the execution and recording of this Option Agreement, Site Owner will continue to be the sole owner in fee simple of, and will lease the Facility and Facility Site to Burgess under a sale/leaseback financing arrangement, with all such arrangements being expressly made subject and subordinate to PSNH's rights hereunder.

E. PSNH, LBB and Berlin Station, LLC have entered into a certain Amended and Restated Power Purchase Agreement dated as of May 18, 2011 (the "Amended PPA") under which PSNH has agreed to purchase the Facility output conditioned upon, among other things, the execution and recording of this Option Agreement.

NOW THEREFORE, in consideration of PSNH's promises to purchase the "Products" (as defined in the PPA) of the Facility at the prices and under the terms of the Amended PPA, and other good and valuable consideration, the Parties agree as follows:

1. **Grant of Option.** Site Owner hereby grants to PSNH, and its successors and assigns, for the fixed period co-extensive with the fixed period of the twenty (20) "Operating Years" from the "In-Service Date" (as defined under the Amended PPA), an exclusive, irrevocable option (the "Option") to purchase the Facility and the Facility Site (together, the "Facility Assets") within the Option Exercise Period hereafter stated and subject to the purchase conditions and terms hereafter stated. Upon the exercise of the Option by PSNH, this Option Agreement shall constitute the agreement of sale and purchase between the Parties with respect to the Facility Assets. Burgess hereby takes and confirms notice of the Option as an interest in the Facility and Facility Site that is prior in right to any leasehold or other estate granted to Burgess by Site Owner.

2. **Option Exercise Period and Termination.**

(a) Except as otherwise provided herein, the "Option Exercise Period" shall commence on the date that is the day after the 20th anniversary date of the designated "In-Service Date" under the Amended PPA and shall extend for one hundred and twenty (120) days. This Option Agreement shall terminate upon the expiration or termination of the Option Exercise Period; provided that if the Option is exercised as provided herein within the Option Exercise Period, then this Option Agreement shall remain in effect to the extent necessary to complete the transactions contemplated hereunder.

(b) Notwithstanding the forgoing, Site Owner may terminate this Option Agreement and the Option without further obligation of any Party at any time subsequent to a valid termination of the Amended PPA by Berlin Station pursuant to Section 12.1.1 of the Amended PPA. This Option Agreement shall otherwise remain in full force and effect as set forth in Section 2(a) above.

3. **Exercise of Option.** In order to exercise the Option, PSNH shall provide a written notice to the Site Owner (or any successor thereof of record) within the Option Exercise Period, which notice shall include a statement of the value of the Cumulative Reduction (as defined in the Amended PPA) existing as of the date of expiration or termination of the Amended PPA. PSNH shall provide such information as Site Owner shall reasonably request supporting the calculation of the Cumulative Reduction. Any disagreement between the Parties as to the calculation of such Cumulative Reduction value will be resolved as per Section 12 below, but no such request for supporting information or dispute shall negate the effectiveness of PSNH's notice of the exercise of the Option. If PSNH exercises the Option within the Option Exercise Period, then the Parties will use diligent and good faith efforts to close on the transfer of the Facility Assets to PSNH as soon as reasonably practicable, and in no case later than one hundred eighty (180) days from PSNH's notice exercising the Option.

4. **Purchase Price.**

(a) The "Purchase Price" for the Facility Assets pursuant to the Option shall equal (i) the fair market value of the Facility Assets as of commencement of the Option Exercise Period (assuming the Facility Assets are sold free of all financing liens and encumbrances) less (ii) any Cumulative Reduction value (expressed as a positive number for purposes of this calculation), provided that the Purchase Price shall not be less than zero.

(b) If the Parties are unable to establish a mutually-agreeable fair market valuation for the Facility Assets within the first twenty (20) days after the exercise of the Option, then PSNH and Site Owner shall each select two (2) qualified independent commercial appraisers to provide a fair market valuation of such Facility Assets. The highest and lowest of the resulting four (4) appraisal valuations shall be discarded, and the remaining two (2) valuations shall be averaged to arrive at a binding fair market value for the Facility Assets as soon as practicable (and no later than 70 days after the exercise of the Option). Any disputed and unresolved issues, other than establishment of the Purchase Price, shall be submitted for dispute resolution in accordance with Section 12 below. The appraisals shall be based on the value of the highest and best use of the Facility Assets for their then existing use as an electric generating facility (whether as an operational facility or otherwise), and will not take into account the existence of this Option Agreement, the status or value of the Amended PPA, or the Cumulative Reduction.

5. **Due Diligence, Inspection and Investigation.**

(a) At any time during the Option Exercise Period, at the request of PSNH, or its duly authorized agents, contractors or consultants, Site Owner and Burgess will promptly provide PSNH with access to all documents and records in their possession regarding the Facility Assets and their operation, including (but not limited to) permits, licenses, contracts, leases, project documents, material warranties, operational reports, invoices, financial statements, operational books and records, maintenance and repair records, property tax bills, surveys, agreements with governmental agencies, environmental site assessments, engineering studies or reports, plans, and other documents or reports of whatever nature or description and relating to the Facility Assets and reasonably required by PSNH to evaluate the condition of, title to, and operational economics of the Facility Assets.

(b) At any time during the Option Exercise Period, PSNH, or its duly authorized agents, contractors or consultants, at its own expense may enter and inspect, examine, test and assess the Facility Assets, including, but not limited to, the soil, subsoil, topography, existing fill, drainage, surface and groundwater quality, air and water rights, availability of utilities, zoning, legal compliance, access, suitability, assessments, encroachments, environmental matters, flood plain analysis, wetland requirements, title matters, taxes and all other inspections deemed necessary, desirable or appropriate by PSNH, and Site Owner and Burgess shall fully cooperate with PSNH in promptly providing access to the Facility Assets for such purposes.

(c) In making any entry pursuant to paragraph (b) above, PSNH and its agents, employees, contractors and representatives shall: (i) enter upon the Facility and the Facility Site at their own risk; (ii) conduct all activities on the Facility and the Facility Site in such a way as to minimize damage to the Facility Assets or disruption of Facility operations, indemnify Site Owner and Burgess for any actual damages caused by entry activities and remedy the effects of such entry on the Facility and Facility Site; and (iii) conduct all activities on the Facility and the Facility Site under commercially appropriate liability insurance and at the sole cost and expense of PSNH. Each of Burgess and Site Owner shall cause its officers, employees and any other person operating or otherwise in possession of the Facility Assets to provide entry to the Facility and the Facility Site to PSNH and its duly authorized agents, contractors and consultants, for the purposes described in this Option Agreement.

(d) Notwithstanding anything to the contrary contained in this Option Agreement, PSNH reserves the right to review and consider the results of its due diligence inspections and investigations of the Facility Assets, and to determine whether and to what extent the results of same are satisfactory to PSNH, or not, in its sole and absolute discretion.

6. Title and Title Insurance.

(a) Concurrently with the execution of this Option Agreement and a recording of a memorandum thereof, Site Owner and Burgess, at their sole cost and expense, shall be required to obtain and provide to PSNH a policy of title insurance issued by a nationally recognized title insurance company, in form and content acceptable to PSNH insuring PSNH's interest in and under this Option Agreement as of the Effective Date, free of all secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility and Facility Site as of the Effective Date, and subject only to those existing easements, covenants and restrictions of record as PSNH shall determine after suitable review and in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Permitted Encumbrances"). The amount of such title insurance shall be Forty Seven Million Dollars (\$47,000,000), and shall include an endorsement to coverage affirmatively insuring the Option Agreement and PSNH's interest thereunder against unenforceability or other loss due to or resulting from violation of the New Hampshire Rule Against Perpetuities. A Commitment of Title Insurance shall be provided to PSNH prior to execution of this Option Agreement and the recording of a memorandum thereof, to allow for PSNH's suitable review to determine compliance with this provision.

(b) All secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility Site and other Facility Assets as of the Effective Date shall be discharged or fully subordinated to PSNH's rights under this Option Agreement. Subsequent to the Effective Date, Site Owner may grant or allow, without PSNH's consent but with notice to PSNH, any mortgage, security interest, leasehold, or other lien, encumbrance, or conveyance of or upon the Facility Assets that it determines

necessary or appropriate in connection with the financing and operations of the Facility Assets (the "Subsequent Encumbrances"); *provided*, that all such Subsequent Encumbrances shall remain subject and subordinate to the prior Option rights of PSNH hereunder. PSNH may require that the holder of any Subsequent Encumbrance confirm PSNH's prior rights hereunder. PSNH will not unreasonably withhold its consent to the subordination of its rights hereunder to a Subsequent Encumbrance that is not a mortgage, grant of any security interest, leasehold or other similar lien, and is necessary or appropriate to operate or maintain the Facility Assets, such as third party utility or service easements. Nothing in this Option Agreement shall act as a restraint on the sale or transfer of the Facility Assets; *provided*, that any such sale or transfer shall remain expressly subject to PSNH's rights hereunder, which rights shall be binding on any subsequent owner of any Facility Asset.

(c) During the Option Exercise Period, PSNH shall be entitled, at its sole cost and expense, to examine the title to the Facility Assets and to obtain a commitment from a title insurance company acceptable to PSNH evidencing satisfactory title vested in the Site Owner as of the effective date thereof, and pursuant to which such title insurance company agrees to issue to PSNH, in form and content acceptable to PSNH, an owner's policy of title insurance, for an amount not less than the Purchase Price to be determined hereunder, at standard premium rates, and subject only to the standard policy coverage terms, conditions, exceptions and exclusions, but excepting the Permitted Encumbrances and those new or additional existing easements, covenants and restrictions of record, if any, as PSNH shall determine after suitable review in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Additional Permitted Encumbrances").

7. **Conveyance of Title.** At closing on transfer of the Facility Assets pursuant to an exercise of the Option, Site Owner shall cause to be executed and delivered to PSNH or its successor or assignee a quitclaim deed or deeds, and such assignments, bills of sale and other customary conveyance documents, all in form and content acceptable to PSNH and its title insurer, as are necessary for conveying good and insurable title to the Facility Assets free from all defects, liens, security interests, easements, restrictions, covenants, encroachments, and any other encumbrances, except: (i) real estate taxes and assessments not yet due and payable; (ii) the Permitted Encumbrances and the Additional Permitted Encumbrances, if any; and (iii) such other matters as may be consented to or waived in writing by PSNH at any time prior to such closing. In connection with any such closing, Site Owner and/or Burgess shall cause to be transferred to PSNH (to the extent assignable or transferable) by such transfer instruments as shall in form and content be acceptable to PSNH all other personal and intangible property held or controlled by either of them with respect to the Facility or Facility Site, including but not limited to permits, authorizations, exemptions, agreements, vehicles, tools, inventory and spare parts. All Facility Assets will be transferred on an "as is" basis without warranties as to physical condition.

8. Closing Expenses and Apportionments.

(a) All real estate and personal property taxes and assessments, including all unpaid portions of any general or special assessments, levied or assessed against the Facility and the Facility Site ("Taxes"), shall be apportioned between the Parties as of the closing in accordance with closing practice in Coos County, New Hampshire.

(b) Unless otherwise specified herein, all Taxes that are the subject of a statutory lien on the Facility or the Facility Site as of the closing shall be paid by the Site Owner.

(c) Site Owner shall pay for (i) costs to discharge or clear any unpermitted liens or encumbrances, (ii) the costs of any appraisals it is required to provide under Section 5(b); (iii) the costs of its own legal and accounting fees; (iv) one half of the NH Real Estate Transfer Tax; and (v) all fees and costs associated with the transfer or assignment of all permits, licenses and approvals then in effect with respect to the Facility and its operations ("Facility Authorizations").

(d) PSNH shall pay for (i) one half of the NH Real Estate Transfer Tax, (ii) closing title searches and title insurance premium for any Owner's Policy, (iii) the costs of any appraisals it is required to provide under Section 5(b); (iv) the costs of its own legal and accounting fees; and (v) the cost of obtaining any authorization required for PSNH to exercise the Option and take assignment of the Facility Assets, including any assigned Facility Authorizations.

9. Representations, Warranties, and Covenants of the Parties. Each Party hereby represents and warrants to the other Parties as follows as of the Effective Date:

(a) Such Party is not a party to any contract or agreement of any kind whatsoever, written or verbal, which would materially impair its ability to comply with the terms of this Option Agreement.

(b) The Party is a duly formed legal entity, validly existing under the laws of the state of its formation, is qualified to do business in the state of New Hampshire, and has all requisite power and authority to enter into this Option Agreement and to render the performance contemplated hereby.

(c) This Option Agreement is the valid and binding obligation of the Party, enforceable in accordance with its terms.

10. Binding Effect, Assignments. The terms, covenants and conditions of this Option Agreement shall be binding upon and enforceable by the successors and assigns of the Parties. PSNH may assign its rights hereunder to any third party at any time upon prior written notice to Site Owner and Burgess, such written notice to include a written confirmation of acceptance by the assignee. PSNH may record a memorandum evidencing any such assignment.

11. **Governing Law.** This Option Agreement shall be governed in all respects by the laws of the State of New Hampshire. Any rule against perpetuities under New Hampshire law shall not apply to this Option Agreement.

12. **Dispute Resolution.**

(a) **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Option Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within seven (7) days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) **Mediation.** If the dispute has not been resolved by negotiation within thirty (30) days of the disputing Party's Initial Notice, or if the Parties failed to meet within seven (7) days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

(c) **Arbitration.** Any dispute arising out of or relating to this Option Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth above within forty five (45) days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; *provided, however*, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction

thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by all Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Option Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

(d) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

13. **Notices.** Any and all notices required to be delivered hereunder shall be deemed properly given if delivered personally, sent by overnight courier or mailed by registered or certified mail, return receipt requested,

To Site Owner:

Berlin Station, LLC (Delaware LLC)
c/o Cate Street Capital, Inc
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603) 319-4400
Fax: (603) 584-1315

with a copy to:

Murray Plumb & Murray
Attention: Christopher Branson
75 Pearl Street
Portland, ME 04104
Fax: (207) 773-8023

To PSNH:

PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330

Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department
Phone: (603) 634-2931
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

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

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

To Burgess Biomass:

c/o Cate Street Capital, Inc
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603) 319-4400
Fax: (603) 584-1315

or to a Party at such address as may be given by notice in accordance with this Section.

14. **Recorded Memorandum.** The Parties agree to execute and record in the Coos County Registry of Deeds a Memorandum of this Option Agreement in the form attached hereto as Exhibit "B".

15. **Termination and Release.** If the Option Term expires or is terminated without PSNH exercising the Option, PSNH agrees to execute and deliver to Burgess and Site Owner an instrument in recordable form confirming the expiration of the Option.

16. **Confirmations.** Each Party hereto will provide the other with such written confirmations as the requesting Party may reasonably request from time to time, including but not limited to the status of title, counterparties to any Subsequent Encumbrances, and the value of any Cumulative Reduction.

17. **Preservation of Facility Assets.** Burgess and Site Owner agree that on and after the Effective Date of this Option Agreement and continuing to either the termination of the Option Exercise Period if the Option is not exercised by PSNH, or to date of closing if so exercised, (i) to keep and maintain the Facility Assets in a functioning operating condition and in a good state of maintenance and repair, subject to reasonable and normal usage and necessary or required maintenance or repair outages, (ii) not to commit or allow waste or other deterioration of the Facility Assets, (iii) not to suffer or allow the creation or existence of any liens or other encumbrance upon the Facility Assets for mechanics lien claims or any unpaid real property taxes or

municipal assessments or charges of any kind, and (iv) and to promptly cause the removal or discharge of any such liens or other encumbrances at any time they may arise.

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

BURGESS BIOPOWER, LLC

By: _____

Name: _____

Title: _____

BERLIN STATION, LLC

By: _____

Name: _____

Title: _____

Exhibit "A"
Legal Description of Facility Site

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No. 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

1. N40°33'28"E a distance of 232.47 feet to an iron pin.
2. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

1. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.
2. S47°21'29"W a distance of 357.82 feet to a point.
3. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.
4. S38°42'06"W a distance of 164.40 feet to a point.

5. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.
6. S77°24'43"W a distance of 374.08 feet to a point.
7. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.
8. S68°24'58"W, a distance of 204.80 feet to a point.
9. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

1. N12°18'02"E a distance of 128.05 feet to a point.
2. N77° 41'58"W a distance of 229.83 feet to an iron pin.
3. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No. 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

1. S 49°28'23"E a distance of 85.21 feet, to a point.
2. S 77°41'58"E a distance of 229.83 feet to an iron pin.
3. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

1. N 80°26'37"W a distance of 45.46 feet to a point
2. N 40°52'51"E a distance of 17.33 feet to a point
3. N 80°50'40"W a distance of 53.50 feet to a point
4. N 80°31'58"W a distance of 69.28 feet to a point
5. N 80°27'54"W a distance of 47.42 feet to a point
6. N 72°30'00"W a distance of 41.75 feet to a point
7. N 59°33'54"W a distance of 28.05 feet to a point
8. N 50°09'33"W a distance of 58.82 feet to a point
9. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

Exhibit "B"
Form of Memorandum of Purchase Option

MEMORANDUM OF PURCHASE OPTION

This MEMORANDUM OF PURCHASE OPTION (this "Memorandum") is made as of the ____ day of _____, 20__, by and between **Berlin Station, LLC**, a Delaware limited liability company ("Site Owner") having an office and mailing address at _____, and **Burgess Biopower, LLC**, a Delaware limited liability company ("Burgess") having an office and mailing address at _____, and **Public Service Company of New Hampshire**, a New Hampshire corporation ("Option Holder") having a mailing address at _____.

W I T N E S S E T H:

WHEREAS, Site Owner is the owner of certain real property located in the City of Berlin, Coos County, New Hampshire located on Cumberland Street and more particularly described in Exhibit A attached hereto and made a part hereof (the "Option Property"); and

WHEREAS, Site Owner is the owner of a biomass powered electrical generation facility including buildings, improvements, fixtures, and other property interests located on or at the Option Property (the "Option Facilities") and Burgess is the lessee of the Facility Site and the Facility; and

WHEREAS, Site Owner and Burgess have granted to Option Holder the exclusive right and option (the "Option") to purchase the Option Property and the Option Facilities and associated personal and intangible property on the terms and conditions stated in a Purchase Option Agreement dated _____, 20__, (the "Option Agreement"); and

NOW, THEREFORE, the parties hereto agree that subject to the complete terms and conditions of the Option Agreement, they wish to give notice as a matter of public record of the following matters regarding the Option Agreement:

1. **Option Property.** The Option Property is a parcel of approximately 62 acres in the City of Berlin, Coos County, New Hampshire as more particularly described in Exhibit A hereto, which parcel constitutes Parcel No. _____ on the City of Berlin property tax records. The Option Facilities include the electric generation plant located on the Option Property, together with all associated real, personal and intangible property.
2. **Option Term.** The Option Agreement became effective on _____, 20__. The Option may be exercised at any time beginning on _____, and ending on _____, 20__ ("Option Exercise Period"). If the Option is not exercised by PSNH or its assignee within the Option Exercise Period, the Option expires.

3. **Complete Terms of Option.** This Memorandum is not intended to set forth all of the terms of the Option Agreement, and reference is hereby made thereto for all of the terms. In the event of conflict between the terms of the Option Agreement and this Memorandum, the terms of the Option Agreement shall control. All provisions of the Option Agreement are incorporated herein by this reference as though fully set forth.

4. **Execution in Counterparts.** This Memorandum may be executed in any number of counterparts, all of which together shall constitute a single instrument, and it shall not be necessary that any counterpart be signed by all the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed by their respective duly authorized officers or representatives as of the date above first written.

Berlin Station, LLC

a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Burgess Biopower, LLC

a Delaware limited liability company

By: _____
Name: _____
Title: Its _____

Public Service Company of New Hampshire

a New Hampshire corporation

By: _____
Name: _____
Title: Its _____

[ACKNOWLEDGEMENTS]

EXHIBIT A
"Option Property"

PARCEL ONE

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.001** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No. 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Beginning at an iron pin marking the most northerly corner of land conveyed to White Mountain Energy, LLC as described in Coos County Registry of Deeds, Volume 1064, Page 249, being near the easterly bank of the Androscoggin River, 119.82 feet northerly of Community Street; thence

Along Public Service Company of New Hampshire the following two courses:

3. N40°33'28"E a distance of 232.47 feet to an iron pin.
4. N35°25'38"W a distance of 32 feet to a point on the east shore of the Androscoggin River; thence

Easterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point; thence

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 50 feet to an iron pin; thence continuing

S 60°57'44"E along other land of North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S60°57'44"E 0.11 feet distant; thence

Southerly along the westerly sideline of Hutchins Street the following nine courses:

10. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S45°00'49"W, 37.63 feet.
11. S47°21'29"W a distance of 357.82 feet to a point.
12. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S43°01'47"W, 306.42 feet.
13. S38°42'06"W a distance of 164.40 feet to a point.

14. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S58°03'24"W, 394.40 feet.

15. S77°24'43"W a distance of 374.08 feet to a point.

16. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S72°54'51"W, 318.40 feet.

17. S68°24'58"W, a distance of 204.80 feet to a point.

18. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S88°03'43"W, 181.55 feet; thence

N72°17'31"W along the northerly sideline of Coos Street a distance of 635.75 feet to a point; thence

Northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N17°55'12"W, 32.51 feet; thence

N36°27'07"E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin; thence

N30°58'35"W a distance of 224.19 feet to an iron pin; thence

N80°26'37"W along the northerly sideline of Community Street a distance of 150.30 feet to an iron pin; thence

Along White Mountain Energy property the following three courses:

4. N12°18'02"E a distance of 128.05 feet to a point.
5. N77° 41'58"W a distance of 229.83 feet to an iron pin.
6. N49° 28'23"W a distance of 85.21 feet, to the point of beginning.

PARCEL TWO

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown as **Tax Map 129, Parcel 54.01** on a plan of land entitled "Survey Plat Lands of North American Dismantling Corp. Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC Tax Map 129, Parcel 54.01 Berlin, New Hampshire", dated December 12, 2008 as prepared by York Land Services, LLC, Plan No. 08-045A and recorded as Plan No. 3217, (the "Plan"), being bounded and described as follows:

Commencing at the southwesterly corner of the lot on the northerly side of Community Street on the easterly side of the Androscoggin River; thence

N 40°33'28"E along land of Public Service Company of New Hampshire for 119.82 feet to an iron pin, said pin also marks the beginning point of Parcel One described above; thence

Along North American Dismantling Corporation property the following three courses:

4. S 49°28'23"E a distance of 85.21 feet, to a point.
5. S 77°41'58"E a distance of 229.83 feet to an iron pin.
6. S 12°18'02"W a distance of 128.05 feet to an iron pin on the northerly sideline of Community Street; thence

Westerly along the northerly sideline of Community Street the following nine courses:

10. N 80°26'37"W a distance of 45.46 feet to a point
11. N 40°52'51"E a distance of 17.33 feet to a point
12. N 80°50'40"W a distance of 53.50 feet to a point
13. N 80°31'58"W a distance of 69.28 feet to a point
14. N 80°27'54"W a distance of 47.42 feet to a point
15. N 72°30'00"W a distance of 41.75 feet to a point
16. N 59°33'54"W a distance of 28.05 feet to a point
17. N 50°09'33"W a distance of 58.82 feet to a point
18. N 48°55'11"W a distance of 38.96 feet to a point of beginning.

Shown to contain 0.96 acre, more or less. See also "Site Plan, Cluster Rule/Energy Project, White Mountain Energy, LLC, Community Street, Berlin, New Hampshire" prepared by York Land Service, LLC recorded at the Coos County Registry of Deeds as Plan #1960 (the "Site Plan").

Parcels One and Two combined, contain a total of 62.0 acres, more or less, TOGETHER WITH the rights and benefits granted under an Easement Agreement for Railroad Spur Track from North American Dismantling Corp. to PJPD Holdings, LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1016, and being depicted on Plan No. 3218.

TOGETHER WITH AND SUBJECT TO the rights and benefits granted under the Amendment and Restatement of Easement and Shared Use Agreement for Water Distribution System and Filtration Plant between North American Dismantling Corp., PJPD Holdings, LLC, and Fraser N.H., LLC dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 981.

Meaning and intending to describe a portion of the premises described in the deed of Fraser N.H., LLC to North American Dismantling Corp., dated October 3, 2006 and recorded with the Coos County Registry of Deeds at Book 1190, Page 932; and the same premises conveyed to White Mountain Energy, LLC by deed of Fraser N.H., LLC dated December 19, 2003 and recorded with the Coos County Registry of Deeds at Book 1064, Page 249.

Reference is also made to the plan of land entitled, "Minor Lot Line Adjustment between properties of North American Dismantling Corp., Tax Map 129, Parcel 54.001 and White Mountain Energy, LLC, Tax Map 129, Parcel 54.01, Berlin, New Hampshire", dated October 1, 2007, revised March 12, 2008, and recorded at Coos County Registry of Deeds as Plan No. 3101.

Further meaning and intended to describe the same premises conveyed by North American Dismantling Corporation and White Mountain Energy, LLC to PJPD Holdings, LLC by Quitclaim Deed dated December 23, 2008 and recorded with the Coos County Registry of Deeds at Book 1265, Page 1025, subject to the reservations contained in said Deed.

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

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

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

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

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

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

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

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

1. DEFINITIONS

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

2. AMENDMENTS

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

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

(b) PROPERTY TAX RESOLUTION

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

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

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

3. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: 

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

BERLIN STATION, LLC

By: _____

Name: _____

Title: _____

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

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

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


PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

BERLIN STATION, LLC

By:  _____

Name: ROBERT Desrosiers

Title: Director

SECOND AMENDMENT TO AMENDED AND
RESTATED POWER PURCHASE AGREEMENT

August 18, 2022

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

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

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

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

WHEREAS, 2018 N.H. Laws, 340:2,1 required the Commission to "amend its Order No. 25,213 (Docket DE 10-195) to suspend the operation of the cap on the cumulative reduction factor as set forth on page 97 of its Order for a period of 3 years from the date the operation of the cap would have otherwise taken effect."

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

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

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

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

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

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

WHEREAS, on August 11, 2022, the Commission issued Order No. 26,665, modifying its Order No. 25,213 and its Order No. 26,198 and Order No. 26,333, consistent with the legislation, and directed PSNH to submit the appropriate updates and changes to the Agreement for review and approval in a new Commission docket.

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

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

1. DEFINITIONS

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

2. AMENDMENT

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

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

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

3. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

**PUBLIC SERVICE COMPANY OF
NEW HAMPSHIRE**

By: 

Name: James G Daly _____

Title: Vice President Energy Supply _____

BERLIN STATION, LLC

By: 

Name: John Halle _____

Title: Director _____

EXHIBIT C

Doc # 0005307 Nov 25, 2013 11:24 AM
Coos County Registry of Deeds

Tanya J. Batchelder
Tanya J. Batchelder, Register

Please record & return original to:
Drew A. Anderson, Esq.
Murray, Plumb & Murray
P.O. Box 9785
Portland, ME 04104-5085

Recording Fee: \$ _____

Property in Berlin, Coos County, New Hampshire

PURCHASE OPTION AGREEMENT

This PURCHASE OPTION AGREEMENT (this "Option Agreement") is made as of November 25, 2013 (the "Effective Date") by and between Public Service Company of New Hampshire, a New Hampshire corporation ("PSNH"), Berlin Station, LLC, a Delaware limited liability company ("Site Owner" or "Berlin Station"), and Burgess Biopower, LLC, a Delaware limited liability company ("Burgess"). PSNH, Site Owner and Burgess (together with their respective successors and assigns) are the "Parties" and each individually is a "Party" to this Option Agreement.

RECITALS:

A. Site Owner is developing a biomass fueled electric generating facility having a gross generating capacity output of approximately 70 megawatts (the "Facility") located on an approximately sixty-two (62) acre site in Berlin, New Hampshire, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Facility Site"). For purposes of this Option Agreement, the Facility Site includes all land described in Exhibit "A" and all easements, rights and other real estate interests appurtenant thereto, whether now owned or hereafter acquired by Site Owner, for the use or benefit of the Facility Site and the Facility, and the Facility includes all equipment, generators, boilers, transformers, switching equipment, transmission lines, and other fixtures, trade fixtures, together with articles of personal property necessary to or convenient for the operation of the Facility.

B. Site Owner is the sole owner in fee simple of the Facility Site and the Facility under the deed or deeds recorded in the Coos County Registry of Deeds at Book 1333, Page 928. The Facility Site is a separate tax and zoning lot (or lots) on the zoning and tax assessment records of the City of Berlin, designated as Tax Map: 129, Parcel: 54.01, 54.001.

C. Burgess is the lessee of the Facility Site and the Facility.

D. Burgess and Site Owner anticipate that subsequent to the execution and recording of this Option Agreement, Site Owner will continue to be the sole owner in fee simple of, and will lease the Facility and Facility Site to Burgess under a sale/leaseback financing arrangement, with all such arrangements being expressly made subject and subordinate to PSNH's rights hereunder.

BK 1390PG 0265

E. PSNH, Laidlaw Berlin Biopower, LLC ("LBB") and Berlin Station have entered into a certain Amended and Restated Power Purchase Agreement dated as of May 18, 2011 (the "Amended PPA") under which PSNH has agreed to purchase the Facility output conditioned upon, among other things, the execution and recording of this Option Agreement.

F. Berlin Station as of the Effective Date has granted to PSNH an Easement to all of the Facility Site (the "Easement") and that Easement is recorded in the Coos County Registry of Deeds.

NOW THEREFORE, in consideration of PSNH's promises to purchase the "Products" (as defined in the PPA) of the Facility at the prices and under the terms of the Amended PPA, and other good and valuable consideration, the Parties agree as follows:

1. **Grant of Option.** Site Owner hereby grants to PSNH, and its successors and assigns, for the fixed period co-extensive with the fixed period of the twenty (20) "Operating Years" from the "InService Date" (as defined under the Amended PPA), an exclusive, irrevocable option (the "Option") to purchase the Facility and the Facility Site (together, the "Facility Assets") within the Option Exercise Period hereafter stated and subject to the purchase conditions and terms hereafter stated. Upon the exercise of the Option by PSNH, this Option Agreement shall constitute the agreement of sale and purchase between the Parties with respect to the Facility Assets. Burgess hereby takes and confirms notice of the Option as an interest in the Facility and Facility Site that is prior in right to any leasehold or other estate granted to Burgess by Site Owner.

2. **Option Exercise Period and Termination.**

(a) Except as otherwise provided herein, the "Option Exercise Period" shall commence on the date that is the day after the 20th anniversary date of the designated "In-Service Date" under the Amended PPA and shall extend for one hundred and twenty (120) days. This Option Agreement shall terminate upon the expiration or termination of the Option Exercise Period; provided that if the Option is exercised as provided herein within the Option Exercise Period, then this Option Agreement shall remain in effect to the extent necessary to complete the transactions contemplated hereunder.

(b) Notwithstanding the forgoing, Site Owner may terminate this Option Agreement and the Option without further obligation of any Party at any time subsequent to a valid termination of the Amended PPA by Berlin Station pursuant to Section 12.1.1 of the Amended PPA. This Option Agreement shall otherwise remain in full force and effect as set forth in Section 2(a) above.

3. **Exercise of Option.** In order to exercise the Option, PSNH shall provide a written notice to the Site Owner (or any successor thereof of record) within the Option Exercise Period, which notice shall include a statement of the value of the Cumulative Reduction (as defined in the Amended PPA) existing as of the date of expiration or termination of the Amended PPA. PSNH shall provide such information as Site Owner shall reasonably request supporting the calculation of the Cumulative Reduction. Any disagreement between the Parties as to the calculation of such

Cumulative Reduction value will be resolved as per Section 12 below, but no such request for supporting information or dispute shall negate the effectiveness of PSNH's notice of the exercise of the Option. If PSNH exercises the Option within the Option Exercise Period, then the Parties will use diligent and good faith efforts to close on the transfer of the Facility Assets to PSNH as soon as reasonably practicable, and in no case later than one hundred eighty (180) days from PSNH's notice exercising the Option.

4. Purchase Price.

(a) The "Purchase Price" for the Facility Assets pursuant to the Option shall equal (i) the fair market value of the Facility Assets as of commencement of the Option Exercise Period (assuming the Facility Assets are sold free of all financing liens and encumbrances) less (ii) any Cumulative Reduction value (expressed as a positive number for purposes of this calculation), provided that the Purchase Price shall not be less than zero.

(b) If the Parties are unable to establish a mutually-agreeable fair market valuation for the Facility Assets within the first twenty (20) days after the exercise of the Option, then PSNH and Site Owner shall each select two (2) qualified independent commercial appraisers to provide a fair market valuation of such Facility Assets. The highest and lowest of the resulting four (4) appraisal valuations shall be discarded, and the remaining two (2) valuations shall be averaged to arrive at a binding fair market value for the Facility Assets as soon as practicable (and no later than 70 days after the exercise of the Option). Any disputed and unresolved issues, other than establishment of the Purchase Price, shall be submitted for dispute resolution in accordance with Section 12 below. The appraisals shall be based on the value of the highest and best use of the Facility Assets for their then existing use as an electric generating facility (whether as an operational facility or otherwise), and will not take into account the existence of this Option Agreement, the status or value of the Amended PPA, or the Cumulative Reduction.

5. Due Diligence, Inspection and Investigation.

(a) At any time during the Option Exercise Period, at the request of PSNH, or its duly authorized agents, contractors or consultants, Site Owner and Burgess will promptly provide PSNH with access to all documents and records in their possession regarding the Facility Assets and their operation, including (but not limited to) permits, licenses, contracts, leases, project documents, material warranties, operational reports, invoices, financial statements, operational books and records, maintenance and repair records, property tax bills, surveys, agreements with governmental agencies, environmental site assessments, engineering studies or reports, plans, and other documents or reports of whatever nature or description and relating to the Facility Assets and reasonably required by PSNH to evaluate the condition of, title to, and operational economics of the Facility Assets.

(b) At any time during the Option Exercise Period, PSNH, or its duly authorized agents, contractors or consultants, at its own expense may enter and inspect, examine, test and assess the Facility Assets, including, but not limited to, the soil, subsoil, topography, existing fill, drainage, surface and groundwater quality, air and water rights, availability of utilities, zoning, legal compliance, access, suitability, assessments, encroachments, environmental matters, flood

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plain analysis, wetland requirements, title matters, taxes and all other inspections deemed necessary, desirable or appropriate by PSNH, and Site Owner and Burgess shall fully cooperate with PSNH in promptly providing access to the Facility Assets for such purposes.

(c) In making any entry pursuant to paragraph (b) above, PSNH and its agents, employees, contractors and representatives shall: (i) enter upon the Facility and the Facility Site at their own risk; (ii) conduct all activities on the Facility and the Facility Site in such a way as to minimize damage to the Facility Assets or disruption of Facility operations, indemnify Site Owner and Burgess for any actual damages caused by entry activities and remedy the effects of such entry on the Facility and Facility Site; and (iii) conduct all activities on the Facility and the Facility Site under commercially appropriate liability insurance and at the sole cost and expense of PSNH. Each of Burgess and Site Owner shall cause its officers, employees and any other person operating or otherwise in possession of the Facility Assets to provide entry to the Facility and the Facility Site to PSNH and its duly authorized agents, contractors and consultants, for the purposes described in this Option Agreement.

(d) Notwithstanding anything to the contrary contained in this Option Agreement, PSNH reserves the right to review and consider the results of its due diligence inspections and investigations of the Facility Assets, and to determine whether and to what extent the results of same are satisfactory to PSNH, or not, in its sole and absolute discretion.

6. Title and Title Insurance.

(a) Concurrently with the execution and recording of this Option Agreement, Site Owner and Burgess, at their sole cost and expense, shall be required to obtain and provide to PSNH a policy of title insurance issued by a nationally recognized title insurance company, in form and content acceptable to PSNH insuring PSNH's interest in and under the Easement coupled with this Option Agreement as of the Effective Date, free of all secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility and Facility Site as of the Effective Date, or all such secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility and the facility Site are fully subordinated to the rights of PSNH under the Easement and this Option Agreement pursuant to section 6(b) of this Option Agreement, and subject only to those existing easements, covenants and restrictions of record as PSNH shall determine after suitable review and in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Permitted Encumbrances"). The amount of such title insurance shall be Forty Seven Million Dollars (\$47,000,000), and shall include an endorsement to coverage affirmatively insuring the Option Agreement and PSNH's interest thereunder against unenforceability or other loss due to or resulting from violation of the New Hampshire Rule Against Perpetuities. A Commitment of Title Insurance shall be provided to PSNH prior to execution of this Option Agreement and the recording thereof, to allow for PSNH's suitable review to determine compliance with this provision.

(b) All secured lending arrangements, mortgages, leaseholds and other liens and encumbrances upon the Facility Site and other Facility Assets as of the Effective Date shall be

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discharged or fully subordinated to PSNH's rights under this Option Agreement. Subsequent to the Effective Date, Site Owner may grant or allow, without PSNH's consent but with notice to PSNH, any mortgage, security interest, leasehold, or other lien, encumbrance, or conveyance of or upon the Facility Assets that it determines necessary or appropriate in connection with the financing and operations of the Facility Assets (the "Subsequent Encumbrances"); provided, that all such Subsequent Encumbrances shall remain subject and subordinate to the prior Option rights of PSNH hereunder. PSNH may require that the holder of any Subsequent Encumbrance confirm PSNH's prior rights hereunder. PSNH will not unreasonably withhold its consent to the subordination of its rights hereunder to a Subsequent Encumbrance that is not a mortgage, grant of any security interest, leasehold or other similar lien, and is necessary or appropriate to operate or maintain the Facility Assets, such as third party utility or service easements. Nothing in this Option Agreement shall act as a restraint on the sale or transfer of the Facility Assets; provided, that any such sale or transfer shall remain expressly subject to PSNH's rights hereunder, which rights shall be binding on any subsequent owner of any Facility Asset.

(c) During the Option Exercise Period, PSNH shall be entitled, at its sole cost and expense, to examine the title to the Facility Assets and to obtain a commitment from a title insurance company acceptable to PSNH evidencing satisfactory title vested in the Site Owner as of the effective date thereof, and pursuant to which such title insurance company agrees to issue to PSNH, in form and content acceptable to PSNH, an owner's policy of title insurance, for an amount not less than the Purchase Price to be determined hereunder, at standard premium rates, and subject only to the standard policy coverage terms, conditions, exceptions and exclusions, but excepting the Permitted Encumbrances and those new or additional existing easements, covenants and restrictions of record, if any, as PSNH shall determine after suitable review in its sole discretion are acceptable as necessary or appropriate to operate or maintain the Facility on the Facility Site, will not materially interfere with or restrict such operation or maintenance, or are otherwise acceptable (the "Additional Permitted Encumbrances").

7. **Conveyance of Title.** At closing on transfer of the Facility Assets pursuant to an exercise of the Option, Site Owner shall cause to be executed and delivered to PSNH or its successor or assignee a quitclaim deed or deeds, and such assignments, bills of sale and other customary conveyance documents, all in form and content acceptable to PSNH and its title insurer, as are necessary for conveying good and insurable title to the Facility Assets free from all defects, liens, security interests, easements, restrictions, covenants, encroachments, and any other encumbrances, except: (i) real estate taxes and assessments not yet due and payable; (ii) the Permitted Encumbrances and the Additional Permitted Encumbrances, if any; and (iii) such other matters as may be consented to or waived in writing by PSNH at any time prior to such closing. In connection with any such closing, Site Owner and/or Burgess shall cause to be transferred to PSNH (to the extent assignable or transferable) by such transfer instruments as shall in form and content be acceptable to PSNH all other personal and intangible property held or controlled by either of them with respect to the Facility or Facility Site, including but not limited to permits, authorizations, exemptions, agreements, vehicles, tools, inventory and spare parts. All Facility Assets will be transferred on an "as is" basis without warranties as to physical condition.

8. **Closing Expenses and Apportionments.**

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(a) All real estate and personal property taxes and assessments, including all unpaid portions of any general or special assessments, levied or assessed against the Facility and the Facility Site ("Taxes"), shall be apportioned between the Parties as of the closing in accordance with closing practice in Coos County, New Hampshire.

(b) Unless otherwise specified herein all Taxes that are the subject of a statutory lien on the Facility or the Facility Site as of the closing shall be paid by the Site Owner.

(c) Site Owner shall pay for (i) costs to discharge or clear any unpermitted liens or encumbrances, (ii) the costs of any appraisals it is required to provide under Section 5(b); (iii) the costs of its own legal and accounting fees; (iv) one half of the NH Real Estate Transfer Tax; and (v) all fees and costs associated with the transfer or assignment of all permits, licenses and approvals then in effect with respect to the Facility and its operations ("Facility Authorizations").

(d) PSNH shall pay for (i) one half of the NH Real Estate Transfer Tax, (ii) closing title searches and title insurance premium for any Owner's Policy, (iii) the costs of any appraisals it is required to provide under Section 5(b); (iv) the costs of its own legal and accounting fees; and (v) the cost of obtaining any authorization required for PSNH to exercise the Option and take assignment of the Facility Assets, including any assigned Facility Authorizations.

9. **Representations, Warranties, and Covenants of the Parties.** Each Party hereby represents and warrants to the other Parties as follows as of the Effective Date:

(a) Such Party is not a party to any contract or agreement of any kind whatsoever, written or verbal, which would materially impair its ability to comply with the terms of this Option Agreement.

(b) The Party is a duly formed legal entity, validly existing under the laws of the state of its formation, is qualified to do business in the state of New Hampshire, and has all requisite power and authority to enter into this Option Agreement and to render the performance contemplated hereby.

(c) This Option Agreement is the valid and binding obligation of the Party, enforceable in accordance with its terms.

10. **Binding Effect, Assignments.** The terms, covenants and conditions of this Option Agreement shall be binding upon and enforceable by the successors and assigns of the Parties. PSNH may assign its rights hereunder to any third party at any time upon prior written notice to Site Owner and Burgess, such written notice to include a written confirmation of acceptance by the assignee. PSNH may record a memorandum evidencing any such assignment.

11. **Governing Law.** This Option Agreement shall be governed in all respects by the laws of the State of New Hampshire. Any rule against perpetuities under New Hampshire law shall not apply to this Option Agreement.

12. **Dispute Resolution.**

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(a) **Negotiation Between Executives.** The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Option Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party notice of any dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive ("Initial Notice"). Within seven (7) days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) **Mediation.** If the dispute has not been resolved by negotiation within thirty (30) days of the disputing Party's Initial Notice, or if the Parties failed to meet within fifteen (15) days of the delivery of the Initial Notice, the Parties shall endeavor to settle the dispute by mediation under the then-current CPR Mediation Procedure. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals.

(c) **Arbitration.** Any dispute arising out of or relating to this Option Agreement, including the breach, termination or validity thereof, which has not been resolved by one of the non-binding procedures set forth above within forty five (45) days of the delivery of Initial Notice, shall be finally resolved by binding arbitration in accordance with the then-current CPR Rules for Non-Administered Arbitration (the "CPR Rules") by a sole arbitrator, for disputes involving amounts in the aggregate under three million dollars (\$3,000,000), or three arbitrators, for disputes involving amounts in the aggregate equal to or greater than three million dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4 of the CPR Rules; provided, however, that if either Party will not participate in a non-binding procedure, the other may initiate arbitration before expiration of the above period. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16, with appeals limited to the grounds expressed therein, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Manchester, New Hampshire. The arbitrator(s) are not empowered to award damages in excess of compensatory damages and each Party expressly waives and forgoes any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner.

The fees and expenses associated with mediation and arbitration, including the costs of arbitrators, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement

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signed by all Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the CPR Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of disputes arising out of or related to this Option Agreement. To the fullest extent permitted by law, any resolution, mediation or arbitration proceeding and the settlement or arbitrator's award shall be maintained in confidence by the Parties.

(d) **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AGREEMENT.

(e) **Right to Specific Performance.** Notwithstanding any other provision of this Section 12, the Parties hereto acknowledge that real property is unique and that money damages are not and will not be an adequate remedy in the event of a default under this Option Agreement by parties other than PSNH, and that, therefore, all Parties hereto agree that PSNH shall have all rights in equity, including, but not limited to, specific performance.

13. **Notices.** Any and all notices required to be delivered hereunder shall be deemed properly given if delivered personally, sent by overnight courier or mailed by registered or certified mail, return receipt requested,

To Site Owner:

Berlin Station, LLC (Delaware LLC)
c/o Cate Street Capital, Inc.
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603)319-4400
Fax: (603)584-1315

with a copy to:

Murray Plumb & Murray
Attention: Christopher Branson
75 Pearl Street, PO Box 9785
Portland, ME 04104-5085
Phone: (207) 773-5651
Fax: (207)773-8023

To PSNH:

PSNH - Energy Park
780 N. Commercial Street
P. O. Box 330
Manchester, NH 03105-0330
Attn.: Manager, Supplemental Energy Sources Department

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Phone: (603) 634-2931
Fax: (603) 634-2449
Email: psnhsesd@psnh.com

with an additional notice to Buyer of an Event of Default to:
Public Service Company of New Hampshire
PSNH - Energy Park
780 N. Commercial Street
Manchester, NH 03101
Attention: Assistant General Counsel
Phone: (603) 634-3355
Fax: (603) 634-2438

To Burgess Biomass:

c/o Cate Street Capital, Inc.
One Cate Street, Suite 100
Portsmouth, NH 03801
Phone: (603) 319-4400
Fax: (603) 584-1315

or to a Party at such address as may be given by notice in accordance with this Section.

14. **Record Agreement.** The Parties agree to execute and record this Option in the Coos County Registry of Deeds.

15. **Termination and Release.** If the Option Term expires or is terminated without PSNH exercising the Option, PSNH agrees to execute and deliver to Burgess and Site Owner an instrument in recordable form confirming the expiration of the Option.

16. **Confirmations.** Each Party hereto will provide the other with such written confirmations as the requesting Party may reasonably request from time to time, including but not limited to the status of title, counterparties to any Subsequent Encumbrances, and the value of any Cumulative Reduction.

17. **Special Representation.** Each of the Parties intends that the rights of the parties under this Option constitute an interest in real property. Each of the Parties intends that this Option shall not be considered an "executory contract" (as such term is used in Section 365(a) of the Bankruptcy Code of the United States (11 U.S.C. §§101 et. seq.) (the "Bankruptcy Code"). Furthermore, each of the Parties covenants and agrees not to collude, cause, assist or cooperate with any other person in asserting that the Option is an "executory contract" (as such term is used in Section 365(a) of the Bankruptcy Code).

18. **Preservation of Facility Assets.** Burgess and Site Owner agree that on and after the Effective Date of this Option Agreement and continuing to either the termination of the Option Exercise Period if the Option is not exercised by PSNH, or to date of closing if so exercised, (i)

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to keep and maintain the Facility Assets in a functioning operating condition and in a good state of maintenance and repair, subject to reasonable and normal usage and necessary or required maintenance or repair outages, (ii) not to commit or allow waste or other deterioration of the Facility Assets, (iii) not to suffer or allow the creation or existence of any liens or other encumbrance upon the Facility Assets for mechanics lien claims or any unpaid real property taxes or municipal assessments or charges of any kind, and (iv) and to promptly cause the removal or discharge of any such liens or other encumbrances at any time they may arise.

19. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

BK1390PG0274

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: Paul E. Ramsey
Name: Paul E. Ramsey
Title: Vice President Energy Delivery

BURGESS BIOPOWER, LLC

By: _____
Name: _____
Title: _____

BERLIN STATION, LLC

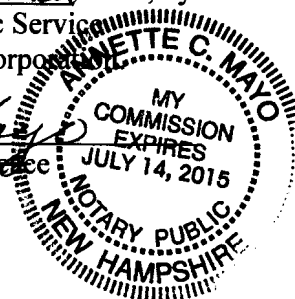
By: _____
Name: _____
Title: _____

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STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

The foregoing instrument was acknowledged before me this 19th day of November, 2013, by Paul E. Ramsey, the duly authorized Vice President ED of Public Service Company of New Hampshire, a New Hampshire corporation, on behalf of said corporation.

Annette C. Mayo
Notary Public / Justice of the Peace



STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the duly authorized _____ of Burgess Biopower, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public / Justice of the Peace

STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the duly authorized _____ of Berlin Station, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public / Justice of the Peace

BK1390PG0276

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

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By: _____

Name: _____

Title: _____

BURGESS BIOPOWER, LLC

By: Charles E. Grecco

Name: Charles E. Grecco

Title: Director

BERLIN STATION, LLC

By: Charles E. Grecco

Name: Charles E. Grecco

Title: Director

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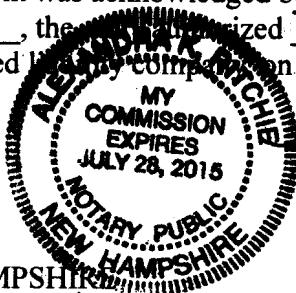
STATE OF NEW HAMPSHIRE
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, the duly authorized _____ of Public Service Company of New Hampshire, a New Hampshire corporation, on behalf of said corporation.

Notary Public / Justice of the Peace

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

The foregoing instrument was acknowledged before me this 18th day of November, 2013, by Charles Grecco, the duly authorized Director of Burgess Biopower, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Alexandra K Ritchie
Notary Public / ~~Justice of the Peace~~

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

The foregoing instrument was acknowledged before me this 18th day of November, 2013, by Charles Grecco, the duly authorized Director of Berlin Station, LLC, a Delaware limited liability company, on behalf of said limited liability company.



Alexandra K Ritchie
Notary Public / ~~Justice of the Peace~~

BK 1390P60278

Exhibit "A"

Legal Description of Facility Site

A certain tract or parcel of land with buildings and improvements thereon located on the east side of the Androscoggin River, on the west side of Hutchins Street and on the north sides of Coos Street and Community Street in Berlin, Coos County, State of New Hampshire, being shown on plan of land entitled "ALTA/ACSM Land Title Survey prepared for Berlin Station, LLC, Tax Map 129, Parcel 54.001 Berlin, New Hampshire", dated August 31, 2011 prepared by York Land Services, LLC recorded in the Coos County Registry of Deeds herewith as Plan Nos. 3563 & 3564 and further described as follows:

Beginning at an iron pin marking the most westerly corner of land conveyed to PJPD Holdings, LLC as described in Coos County Registry of Deeds, Book 1265, Page 1025, being near the easterly bank of the Androscoggin River, on the northerly sideline of Community Street.

Thence along land now or formerly of Public Service Company of New Hampshire the following three courses:

1. N 40°33'28" E a distance of 119.82 feet to an iron pin.
2. N 40°33'28" E a distance of 232.47 feet to an iron pin.
3. N 35°25'38" W a distance of 32 feet to a point on the east shore of the Androscoggin River.

Thence northeasterly along the east shore of the Androscoggin River a distance of approximately 2380 feet to a point.

Thence S 60°57'44" E along land now or formerly of North American Dismantling Corporation a distance of 50 feet to an iron pin.

Thence continuing S 60°57'44" E along land now or formerly of said North American Dismantling Corporation a distance of 1071.24 feet to a point on the westerly sideline of Hutchins Street witnessed by an iron pin with YLS cap, found flush lying S 60°57'44" E, 0.11 feet distant.

Thence southerly along the westerly sideline of Hutchins Street the following nine courses:

1. Arc of a curve to the right having a length of 37.64 feet to a point; said curve having a radius of 460.00 feet and a long chord of S 45°00'49" W, 37.63 feet.
2. S 47°21'29" W a distance of 357.82 feet to a point.
3. Arc of a curve to the left having a length of 306.71 feet to a point; said curve having a radius of 2030.11 feet and a long chord of S 43°01'47" W, 306.42 feet.
4. S 38°42'06" W a distance of 164.40 feet to a point.
5. Arc of a curve to the right having a length of 402.00 feet to a point; said curve having a radius of 594.99 feet and a long chord of S 58°03'24" W, 394.40 feet.
6. S 77°24'43" W a distance of 374.08 feet to a point.

7. Arc of a curve to the left having a length of 318.73 feet to a point; said curve having a radius of 2030.00 feet and a long chord of S 72°54'51" W, 318.40 feet.
8. S 68°24'58" W a distance of 204.80 feet to a point.
9. Arc of a curve to the right having a length of 185.16 feet to a point; said curve having a radius of 270.00 feet and a long chord of S 88°03'43" W, 181.55 feet.

Thence N 72°17'31" W along the northerly sideline of Coos Street a distance of 635.75 feet to a point.

Thence northerly, along the arc of a curve to the right having a length of 37.96 feet to a point; said curve having a radius of 20.00 feet and a long chord of N 17°55'12" W, 32.51 feet.

Thence N 36°27'07" E along the easterly sideline of Community Street and the westerly sideline of the former B&M Railroad a distance of 193.50 feet to an iron pin.

Thence N 30°58'35" W a distance of 224.19 feet to an iron pin.

Thence westerly along the northerly sideline of Community Street the following ten courses:

1. N 80°26'37" W a distance of 150.30 feet to an iron pin.
2. N 80°26'37" W a distance of 45.46 feet to a point.
3. N 40°52'51" E a distance of 17.33 feet to a point.
4. N 80°50'40" W a distance of 53.50 feet to a point.
5. N 80°31'58" W a distance of 69.28 feet to a point.
6. N 80°27'54" W a distance of 47.42 feet to a point.
7. N 72°30'00" W a distance of 41.75 feet to a point.
8. N 59°33'54" W a distance of 28.05 feet to a point.
9. N 50°09'33" W a distance of 58.82 feet to a point.
10. N 48°55'11" W a distance of 38.96 feet to a point of beginning.

Together with the benefit of the following non-exclusive appurtenant easements all in accordance with the terms and provisions thereof:

(a) Rights and easements set forth in Amendment and Restatement of Easement and Shared Use Agreement Water Distribution System and Filtration Plant by and between North American Dismantling Corp., Fraser N.H. LLC and PJPD Holdings, LLC dated December 23, 2008 and recorded in the Coos County Registry of Deeds at Book 1265, Page 981, subject to the terms and provisions thereof;

(b) Rights and easements set forth in Easement Agreement for Railroad Spur Track by and between Fraser N.H. LLC and PJPD Holdings, LLC dated December 23, 2008, recorded in the Coos County Registry of Deeds at Book 1265, Page 1001, subject to the terms and provisions thereof;

(c) Rights and easements set forth in Easement Agreement for Railroad Spur Track by and between North American Dismantling Corp. and PJPD Holdings, LLC dated December 23,

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2008, recorded in the Coos County Registry of Deeds at Book 1265, Page 1016, subject to the terms and provisions thereof;

(d) Rights and easements reserved in Deed of Brown Company to the City of Berlin, dated August 20, 1980, recorded with said Registry of Deeds at Book 633, Page 334. subject to the terms and provisions thereof;

(e) Rights and easements set forth in Articles 1.01; 2.01; 2.02 and 2.03 of the Agreement Creating Certain Easements Over Property of FP Acquisitions, LLC Berlin, Coos County, New Hampshire, dated March 8, 2011 by and between FP Acquisitions, LLC and PJPD Holdings LLC, recorded with the Coos County Registry of Deeds at Book 1324, Page 111,; as such rights and easements are affected by First Amendment and Supplement to Agreement creating certain easements over property formerly of FP Acquisitions LLC, presently of Gorham Paper & Tissue, LLC Berlin, Coos County, New Hampshire and PJPD Holdings LLC, dated July 5, 2011, recorded with said Registry of Deeds at Book 1331, Page 383 only to the extent such rights and easements lie within the bounds of Parcel B on Plan recorded with the Coos County Registry of Deeds as Plan #2786; and

(f) Rights and easements set forth in Article 2 of that certain Sub-Easement Deed (Outfall Pipe) from Androscoggin Valley Regional Refuse Disposal District to Berlin Station, LLC, dated August 23 2011, recorded with said Registry of Deeds at Book 1333, Page 934; as affected by Consent to Sub-Easement and to Continued Use of Easement from Public Service Company of New Hampshire, dated August 29, 2011, recorded with said Registry of Deeds at Book 1333, Page 946 only to the extent such rights and easements are within the bounds of Parcel B on Plan #2786 recorded with said Registry of Deeds.

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